TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 687

JOHN H. FAHEY AND A. V. AMMANN, INDIVIDUALLY AND RESPECTIVELY AS FEDERAL HOME LOAN BANK COMMISSIONER AND CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, APPELLANTS

vs.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, ET AL

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FILED NOVEMBER 9, 1946

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6-33 In the District Court of the United States
Southern District of California, Central Division
For Hearing by the Court—of Three Judges
(Pursuant to Section 380 (a) —Title 28 Judicial Code)
Civil Action—File No. 5421-PH

PAUL MALLONEE, C. H. NEWHOUSE, and WINNIE BUCKLIN, individually, and as REPRESENTATIVES of a class, suing for and on behalf of all of the shareholder members of THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, an association organized and existing under and by virtue of the Laws of the United States of America, PLAINTIFFS

vs.

JOHN H. FAHEY, individually, JOHN H. FAHEY as CHAIRMAN of the FEDERAL HOME LOAN BANK BOARD, A. V. AMMANN, individually, A. V. AMMANN, as the purported Conservator for the Long Beach Federal Savings and Loan Association, THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION OF LONG BEACH, CALIFORNIA, an association organized and existing under and by virtue of the Laws of the United States of America, JOHN DOE ONE, 34 JOHN DOE TWO, JOHN DOE THREE, JANE DOE ONE, JANE DOE TWO, JANE DOE THREE, DOE & ROE, a co-partnership, FIRST AND LAST, a co-partnership, JOHN DOE COMPANY, a corporation, BLACK AND WHITE, an unincorporated association, DEFENDANTS

Complaint

Filed May 27, 1946

Comes now, the Plaintiffs and complain of the defendants and for causes of action, allege:

I

a. This action arises under the Fifth Amendment of the Constitution of the United States of America in that Plaintiffs have been deprived of property in excess of Twenty-six Million ($26,000,000.00) Dollars, without due process of law as hereinafter more fully appears.

b. This action also arises under and involves the interpretation and effect of the following Acts of Congress of the United States of America:

1. "Home Owners Loan Act of 1933," as amended—Public No. 43—73rd Congress—48 Statutes 132 (June 13, 1933—Chapter 64, Paragraph 1, 48 Statutes 128)

2. "Federal Home Loan Bank Act," as amended—Public No. 304—72nd Congress (July 22, 1932, Chapter 522, Paragraph 1, 47 Statutes 725 and amendments thereto)

3. "The National Housing Act"—Public No. 479 73rd Congress (June 27, 1934, Chapter 847, 48 Statutes 1246 and amendment thereto), and

4. Regulations, rules and directives purportedly made and adopted pursuant to and under each and all of said Acts.

c. This action involves amounts in controversy in excess, exclusive of interest and costs, of the sum of Three thousand ($3,000.00) Dollars, to wit: involves amounts in controversy in excess of Twenty-six Million ($26,000,000.00) Dollars.

d. This action also seeks injunctive relief to prevent the wrongful dissipation of private property in amounts in excess of Twenty-six Million ($26,000,000.00) Dollars, wrongfully taken without due process of law and to restrain the enforcement, operation and execution, in whole or in part, of Acts of Congress, upon the ground that such Acts or parts thereof, are repugnant to the Constitution of the United States, and Amendment V thereof, and therefore pursuant to the provisions of Section 380 (a) of Title 28 of the Federal Judicial Code, the Plaintiffs respectfully request the senior Circuit Judge of the Ninth Judicial Circuit to immediately designate three (3) Judges to comprise the Court to hear this action as in said Section 380 (a) provided.

II

The Long Beach Federal Savings and Loan Association is an association organized and existing under and by virtue of the Laws of the United States of America, having its principal place of business in, and being situated

in, and transacting its business in and from, the City of Long Beach, County of Los Angeles, State of California.

That the principal place of business in the said City of Long Beach, of said Long Beach Federal Savings and Loan Association, and all of the private property, real property, personal property, securities, negotiable bonds, cash, and all assets of said association, aggregating in excess of Twenty-six Million ($26,000,000.00) Dollars, have heretofore been unlawfully seized, diverted and are now unlawfully held by and detained by, and in the possession of the Defendants, John H. Fahey, individually, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, individually; A. V. Ammann, as the purported Conservator for the Long Beach
36 Federal Savings and Loan Association, John Doe, John Doe Two, John Doe Three, Jane Doe One, Jane Doe Two, Jane Doe Three, Doe & Roe, a co-partnership, First and Last, a co-partnership, John Doe Company, a corporation, Black and White, an unincorporated association.

That all of said assets of said Association when so seized by said defendants, on the 20th day of May, 1946, as aforesaid, were located in the County of Los Angeles, State of California.

III

That the Plaintiffs are ignorant of the true names of the defendants, John Doe One, John Doe Two, John Doe Three, Jane Doe One, Jane Doe Two, Jane Doe Three, Doe and Roe, a co-partnership, First and Last, a co-partnership, John Doe Company, a corporation, Black and White, an unincorporated association, and for that reason they are sued herein under said names as fictitious names, and Plaintiffs pray that when the true names of these defendants are ascertained, they may be inserted herein and in all subsequent proceedings in said action and that the said action may then proceed against them under their true names.

IV

That Plaintiff, Paul Mallonee, is a member of said Long Beach Federal Savings and Loan Association, and is the

owner of membership certificates issued by said association having an aggregate face value in excess of Twelve Thousand ($12,000.00) Dollars.

That Plaintiff, C. H. Newhouse, is a member of said Long Beach Federal Savings and Loan Association, and is the owner of membership certificates issued by said association having an aggregate face value in excess of Eleven Thousand ($11,000.00) Dollars.

That Plaintiff, Winnie Bucklin, is a member of said Long Beach Federal Savings and Loan Association, and is the owner of membership certificates issued by said association having an aggregate face value in excess of Twenty-nine Thousand ($29,000.00) Dollars.

That the Plaintiffs are suing individually for the protection of their own ownership and interests in the assets unlawfully, wrongfully, and illegally, seized as hereinafter alleged.

That the Plaintiffs are also suing as representatives of a class, which said class consists of each and every member shareholder of the said defendant, Long Beach Federal Savings and Loan Association.

Plaintiffs are informed and believe, and therefore allege, that the aggregate number of such individual member shareholders was approximately Twenty thousand ($20,000) at the time of said unlawful seizure of said association's Twenty-six Million Dollars ($26,000,000.00) in assets.

That it is impracticable and impossible to join each and all of said Twenty thousand (20,000) individual shareholders as parties Plaintiff or Defendant in this action and that therefore Plaintiffs, in bringing this action, do so, as representatives of said class, each and every individual shareholder member of which is directly concerned and his fractional undivided interest will be increased or decreased by the outcome of this action.

V

That said association was first organized in 1934 by the present management and Board of Directors. That said present management and Board of Directors have been uniformly re-elected at each annual meeting of share-

holders from the inception of said company to the present time.

That under the control, guidance and direction of said Board of Directors and management, said association has grown and its assets have increased from approximately Five thousand ($5,000.00) Dollars in 1934 to approximately Twenty-six Million ($26,000,000.00) Dollars. That said association has uniformly and consistently paid a dividend to its shareholders each and every year since its organization without omission or default of any sort from
38 the date of its inception to the time it was unlawfully seized by certain of the defendants. That said dividend varied from a maximum of Four (4%) percent per annum to a minimum of Two and one-half (2½%) percent per annum.

VI

That said corporation is completely and fully solvent and able to pay all of its obligations in full at any and all times and in addition thereto has surplus, reserves and undivided profits, above all such obligations of approximately One Million three hundred thousand ($1,300,000.00) Dollars.

VII

Plaintiffs are informed and believe and upon such information and belief allege that on or about the 20th day of May, 1946, the defendant, A. V. Ammann and numerous other persons accompanying him, and claiming to be his deputies, employees and subordinates, and whose names are unknown to plaintiffs, all of whom purporting to act under authority of the Federal Home Loan Bank Administration and purporting to act under the authority of the defendant John H. Fahey, appeared at the offices of the said Long Beach Federal Savings and Loan Association in Long Beach, and said A. V. Ammann verbally announced that he, the said A. V. Ammann, had been appointed Conservator for the said Long Beach Federal Savings and Loan Association, and he and his deputies and employees did then and there unlawfully take immediate possession and control of said association and did

then and there deprive it of all of its private property, real property, personal property, securities, negotiable bonds, cash, and all its assets, aggregating in excess of Twenty-six Million ($26,000,000.00) Dollars, and he did fail, neglect and refuse to give receipts or other acknowledgement of delivery thereof, despite and notwithstanding repeated demands therefor by the management and officers of said association, from whose possession he was forcibly wresting and seizing said property, assets, securities, etc., all in violation of, and contrary to, the provisions of the Fifth Amendment of the Constitution of the United States of America.

That the said A. V. Ammann and his deputies, employees, and subordinates, then and there, did forcibly, unlawfully and unreasonably, take and seize all of the books, records, documents, accounts, correspondence, evidences, files, memorandums, receipts for deposited securities, evidences of indebtedness, certificates of the said association, all in violation of and contrary to the provisions of the Fourth Amendment of the Constitution of the United States of America.

That ever since said time, said defendant, John H. Fahey and the defendant, A. V. Ammann and various other defendants purporting to act for and under them have remained in illegal possession, control and dominion over the said association and have deprived it of its assets, bank accounts, securities, cash, premises, books, records, files and documents. The said defendants and each and all of them have failed, neglected and refused to set forth any ground or reasons for their seizure of control and possession of the said association and its assets and records.

That they have made various public statements to the Press and otherwise and that they and each of them in each and all of said statements have asserted that the said association is financially solvent, in good condition and is able to pay and meet each and all of its obligations. Notwithstanding which said defendants and each and all of them except Long Beach Federal Savings and Loan Association continue in illegal possession, control and dominion over the cash, securities, assets, premises, books and records of said association.

VIII

That plaintiffs are informed and believe and upon such information and belief allege that no defects exist in the capital structure assets, books or records of said association, in any nature whatsoever, nor has the said defendants, John H. Fahey, nor any of the other defendants ever made, or given any complaints to the said association, its officers, directors, or members, any notices to correct, orders to desist, or other directives to make changes; nor have any other conditional or alternative or probationary matters been suggested or communicated or directed to said association or its officers, nor have any chances or opportunities whatsoever of any kind or nature been given to said association, its members, directors, management or officers to make any changes, corrections or improvements whatsoever, to meet any demands, requirements or impositions of the said defendants.

That the summary and forcible seizure of all of the assets of this Twenty-six Million ($26,000,000.00) Dollars, organization, with its record of successful management and growth and which enjoyed the complete confidence of the general public, as well as the confidence of its Twenty thousand (20,000) members, without any notice or reasons being given for said unlawful seizure or any opportunity afforded to correct any alleged defects, if any, was a wilful, wanton, malicious and vindicative act, calculated and intended to destroy the confidence and faith built-up over more than a decade and was wholly unnecessary, unwarranted, illegal and arbitrary.

IX

The Plaintiffs are informed and believe and upon such information and belief allege that on or about the 29th day of March, 1946, the defendants, John H. Fahey and A. V. Anmann arbitrarily, unlawfully and without notice, seized possession and control of the Federal Home Loan Bank of Los Angeles, which at the time of said seizure, had assets totalling Forty-three million ($43,000,000.00) Dollars; and at the time of said seizure, said Federal Home Loan Bank of Los Angeles was fully and com-

pletely financially solvent and had a surplus of nearly Two Million ($2,000,000.00) Dollars. That at the time of said seizure, Long Beach Federal Savings and Loan Association owned Three hundred and sixty thousand ($360,000.00) Dollars paid in cash value of the stock of said Federal Home Loan Bank of Los Angeles and
41 owned a proportionate share of its said surplus in excess of Forty thousand (40,000.00) Dollars. That subsequent to said seizure, the President of the said Long Beach Federal Savings and Loan Association, one T. A. Gregory, made continued and insistent efforts to recover the said Four hundred thousand ($400,000.00) Dollars of assets of the said Long Beach Federal Savings and Loan Association thus seized by the said defendants, John Fahey and A. V. Ammann.

That as a result of said efforts, acrimonious controversies arose between said defendant, John H. Fahey and the said President, T. A. Gregory; that said efforts to recover said Four hundred thousand ($400,000.00) Dollars of assets were completely and wholly unsuccessful.

That in addition, said Long Beach Federal Savings and Loan association then had in excess of Eight Million ($8,000,000.00) Dollars, in United States bearer Bonds also on deposit in said seized Federal Home Loan Bank of Los Angeles. That in the process of the controversy resulting from said association's efforts to recover its thus unlawfully seized property from said defendants, John H. Fahey and A. V. Ammann, a Congressional investigation of said seizure was instituted by a committee of the Congress of the United States. That while said Congressional investigation was pending and while said efforts of the Long Beach Federal Savings and Loan Association to recover its assets were being made, the said defendants John H. Fahey and A. V. Ammann arbitrarily, without legal justification, purportedly merged the said Federal Home Loan Bank of Los Angeles, and its assets of Forty-three Million ($43,000,000.00) Dollars into the Federal Home Loan Bank of Portland which then had assets of less than Nine Million ($9,000,000.00) Dollars and moved the thus purportedly merged two Federal Home Loan Banks to the City of San Francisco.

That in furtherance of the Long Beach Federal Savings

and Loan Association's efforts to recover back its Four hundred thousand ($400,000.00) Dollars worth of assets and to secure an accounting for its other assets, the said Long Beach Federal Savings and Loan
42 Association appropriated funds to be used in the recovery of said assets and the obtaining of said accounting.

That these plaintiffs are informed and believe and on such information and belief, allege that in pursuing the proper and lawful rights of the said T. A. Gregory, as President of said Long Beach Federal Savings and Loan Association in and about the recovery of the assets of said association for and on its behalf, which said assets were then and there wrongfully and unlawfully detained by the defendants herein, John H. Fahey and A. V. Ammann, authority was given to him, the said T. A. Gregory, as such President and to other officers of said Long Beach Federal Savings and Loan Association to make investigations and to institute appropriate legal proceedings for said purposes and to expend sums of money therefor; that in order to stop such investigation and to prevent the bringing of such legal actions, defendants John H. Fahey and A. V. Ammann arbitrarily, unlawfully, without cause and without due, or any process, seized possession and control of the Long Beach Federal Savings and Loan Association and deprived it of all of its assets, books, records and evidence.

That in order to prevent such litigation said defendants continue to unlawfully hold possession and control of said association and have purportedly appointed the defendant, said A. V. Ammann to act as Conservator in the place and stead of its regular officers and for the further purpose of depriving the said President, T. A. Gregory, and said officers of authority to bring appropriate legal proceedings for the recovery from the said defendants, John H. Fahey and A. V. Ammann of the said wrongfully withheld assets of the Long Beach Federal Savings and Loan Association.

X

Defendants, John H. Fahey and A. V. Ammann, through their seizure of the Federal Home Loan Bank of

Los Angeles obtained illegal and unlawful possession and control over assets belonging to the defendant, Long Beach Federal Savings and Loan association to
43 wit: Three hundred and sixty thousand ($360,000.00) Dollars paid in cash value of stock in the said Federal Home Loan Bank of Los Angeles, together with the Long Beach Federal Savings and Loan Association's interest, amounting in excess of Forty thousand ($40,000.00) Dollars, in undivided surplus of said Federal Home Loan Bank of Los Angeles, making an aggregate total in excess of Four hundred thousand ($400,000.00) Dollars of assets of said Long Beach Federal Savings and Loan Association so unlawfully held by them.

That the said A. V. Ammann was and is the purported Conservator for said Federal Home Loan Bank of Los Angeles.

That the said defendants, John H. Fahey and A. V. Ammann, must therefore as purported Conservators for the Long Beach Federal Savings and Loan Association sue themselves for said assets, which they unlawfully took from possession of said Federal Home Loan Bank of Los Angeles.

That they must decide whether to leave said assets of said Federal Home Loan Bank in their own possession or to transfer said assets to said Long Beach Federal Savings and Loan Association, also in their own possession.

That said dual capacity is inconsistent and conflicting and that said defendants cannot properly discharge their duties both to the said seized Federal Home Loan Bank of Los Angeles, and to the said unlawfully seized Long Beach Federal Savings and Loan Association.

XI

That plaintiffs are informed and believe and upon such information and belief allege that various personal disputes and differences have arisen between Thomas A. Gregory, President of said Long Beach Federal Savings and Loan Association and defendant John H. Fahey and that a personal animosity and hostility exists on the part of John H. Fahey against the President of said Long

Beach Federal Savings and Loan Association, the said Thomas A. Gregory.

Plaintiffs are informed and believe and upon such
44 information and belief allege that the seizure of said association and its assets and the appointment of a Conservator thereof by the said defendants and each of them was an unreasonable seizure and was done without due, or any legal process of law, right or justification whatsoever and was motivated purely and solely by malice and ill will on the part of said defendants against the said President of said Long Beach Federal Savings and Loan Association.

XII

That none of the said Acts of Congress under which these said defendants are purportedly acting provide for any judicial review of the exercise of the authority delegated to, and conferred upon them; that the regulations adopted by these same defendants purport to give themselves the authority under which they arbitrarily seized without prior notice or hearing of any sort whatsoever said association and all its assets.

That the said delegation of legislative authority to said administrative officials to make and create their own rules and regulations for hearings and seizures do not set forth, nor prescribe any rules, guides, nor controls for the proper exercise by the said administrative official of the legislative authority so delegated.

That the said regulations adopted by the Federal Home Loan Bank Administration make no provisions of any nature whatsoever for any representative of the membership shareholders of said association to appear before said commissioner or to have any opportunity to be heard or to have any voice in the determination of their rights, privileges or benefits there being considered and determined.

That the official conducting said hearing is the same commissioner who without notice ordered the taking over and unlawful seizure of the assets of said association and the appointment of the purported Conservator therefor as hereinbefore alleged.

That the said regulations purport to suspend the authority of said association to transact any further business, do any further acts or to otherwise act for, or protect the said membership shareholders and their interests and property. That no provision is made in said regulations or in the acts under which they were adopted or in any of the same, for any judicial determination of the truth or falsity or any of the allegations made by said commissioner in making said seizure and in appointing said Conservator, or for determination of the validity of the acts done by him.

That the said defendant John H. Fahey and his agents, employees and representatives will be acting as prosecutor and as judges and will determine for themselves the validity, authority and propriety of their own actions. The only other persons permitted to participate in said hearing, are the said association, the powers of which have been suspended, whose officers have been discharged and possession of whose assets, premises, securities, books and records have been seized by the defendants conducting said hearing. That all of the foregoing is in direct violation of and contrary to the Fifth Amendment to the Constitution of the United States of America.

That said plaintiffs and each of them, and the class for which said plaintiffs are suing as representatives are thereby deprived of their property without due process of law and without any opportunity to be heard in an impartial tribunal.

XIII

That a bona fide controversy and dispute exists between plaintiffs and defendants as follows:

Defendants and each of them except only Long Beach Federal Savings and Loan Association claim to be authorized, empowered and entitled without giving grounds, causes or reasons therefor to seize the control, operation and management of said association, its assets, premises, cash, and securities and to continue indefinitely in said control, operation and management of the said association. Plaintiffs on the other hand claim that the duly-authorized, constituted, elected and empowered officers and directors of said association are the proper persons to manage, control, possess and operate the said

association. That each of said contentions of plaintiffs and of defendants are conflicting and irreconcilable and can not both be correct.

XIV

Plaintiffs are informed and believe and therefore allege that said defendants, and each and all of them, excepting only defendant Long Beach Federal Savings and Loan Association, intend to and will, unless prevented and restrained by this Honorable Court from so doing, transfer, dissipate, assign and convey and com-ingle various and sundry assets, cash, stocks, bonds, securities, notes, deeds of trust, real estate and other properties, and assets of the said Long Beach Federal Savings and Loan Association to and with various other financial organizations in an effort to break up and dissipate said association, its membership shares and organization by forcing its members to become members of other associations or financial organizations and to accept in lieu of their present memberships in the said Long Beach Federal Savings and Loan Association memberships, share or certificates of other financial organization, associations, etc., the names of which are now unknown, etc., the names of which are now unknown to these plaintiffs; that the plaintiffs have no plain speedy or adequate remedy at law.

That during the last calendar month, to wit: April, 1946, before the said unauthorized and unlawful seizure, the deposits of the Long Beach Federal Savings and Loan Association were increased by approximately five to six hundred thousand dollars ($500,000.00) to ($600,000.00). That in the four days immediately following the said unauthorized and illegal seizure of said institution, withdrawals therefrom have run as high as two million dollars ($2,000,000.00) per day, and plaintiffs are informed and believe and therefore allege that the total aggregate of such withdrawals for the first five days after said seizure was between six and seven million dollars ($6,000,
47 000. and $7,000,000.00) or more than twenty-five percent (25%) of the total deposits.

XV

That plaintiffs are informed and believe, and on such information and belief allege that the defendants, John

H. Fahey and/or A. V. Ammann have been continuously in possession of all assets of the said Long Beach Federal Savings and Loan Association, at all times since May 20, 1946, and on the same grounds, allege that during all said period of time they, either of them, and/or their agents or representatives, have converted, reconverted, discounted, sold and/or changed the form of, certain of said assets, and on the same ground, allege that during said period of time, dividends have been declared on certain of said assets, coupons and/or interest payments have accrued and been paid and/or clipped on account of bonds owned by said association and that various and sundry payments of principal and interest have been made on account of mortgages, trust deeds, and various other notes owned by said defendant association.

XVI

That plaintiffs are informed and believe, and on such information and belief, allege that since May 20, 1946, said defendant A. V. Ammann and/or the defendant John H. Fahey have disbursed the funds of said association, some of which said disbursements are for lawful purposes such as payments of salaries, expenses or overhead and other proper payments but that on the same ground, these plaintiffs allege that as to certain other payments, these plaintiffs have no information or belief at this time as to whether or not said disbursements are, or are not, of a lawful nature; on the same grounds, these plaintiffs allege that since May 20, 1946, various and large amounts have been paid by the said defendants A. V. Ammann and John H. Fahey in the redemption of and/or in payment of the membership certificates of various members of this association and on the same ground, allege that loans and/or advances have been made by the same defendants to various of the member depositors of the said association on collateral security of said membership share accounts and on the same ground, allege that the said sums of money so received by said defendants, as aforesaid, were in excess of the sums so expended by them, since May 20, 1946; that said defendants, and each of them, should be ordered, directed and required by this Court to make a complete and detailed accounting to the

said Long Beach Federal Savings and Loan Association and/or to its officials and/or to whomsoever the Court may determine, showing all the income, disbursements and other transactions had during the time of their operation thereof.

XVII

That the plan of organization of the said defendant Long Beach Federal Savings and Loan Association is that of a mutual thrift association, wherein each of the members own a fractional undivided proportion of the assets in proportion to the amounts of money they have contributed for the purchase of said shares and also a fractional undivided equitable interest in the amount of surplus, reserves, earnings, accumulations, and increase of such assets.

That the ownership and interest of each individual shareholder member is decreased, diminished and reduced by every action which harms the association, shakes public confidence in it, causes runs to be made upon it by members and creditors, and conversely, the ownership percentage and proportion of each individual member shareholder is increased, appreciated and enhanced in value by efficient and economical management.

49 Wherefore, Plaintiffs pray judgment against the defendants and each of them, as follows, to wit:

1. That Order be made removing the said defendant, A. V. Ammann, as Conservator of the Long Beach Federal Savings and Loan Association;

2. That Order be made that the duly elected and qualified officers of the Long Beach Federal Savings and Loan Association be allowed to resume the title to, and be restored to, full possession of all of the property and assets of the said association and be restored to, and placed in full control of, the business of said association and the said Conservator and said defendants be directed, ordered and instructed to return and relinquish control and possession of any and all property, assets, securities, cash and possession of said association to the said officers and directors of the Long Beach Federal Savings and Loan Association.

3. That Order be made that the defendants, John H.

Fahey and A. V. Ammann be ordered to account to the aforesaid Long Beach Federal Savings and Loan Association for all moneys, and/or income of all kinds received by them, while acting as the alleged Conservator or Conservators of said association, together with interest on all such sums of money received, together with a detailed and complete report of any and all transactions had by them, as such Conservator or Conservators of said association, since May 20, 1946, and that they be ordered to deliver to said Long Beach Federal Savings and Loan Association all such property, stock, bonds, notes and other personal property and such sum of money as they may have received during such period of time, less property disbursements so made by them.

4. That Order be made adjudicating, declaring and determining the rights, obligations and duties of defendants, and each and all of them, to plaintiffs individually and to the class for which plaintiffs are suing as a representative, to wit: to each, all and every membership shareholder, and that said Court adjudicate said defendants' rights and duties, if any, over the property, assets, etc., of said association.

5. That Order be made directing and requiring the defendants and all of them to set forth the basis, grounds and matters, if any, upon which they claim authority and right to seize control of the assets, property and affairs of said association and that if on being so set forth any valid objections, omissions, or defects be found, that plaintiffs and said association be given an opportunity by interlocutory order of this honorable court to correct the same under the supervision of this Honorable Court.

6. That Order be made enjoining and restraining the said defendants, and each and all of them from making any transfers, assignments, conveyances, mergers or other diversions of the assets, securities, cash and resources and properties of said Long Beach Federal Savings and Loan Association excepting only such sales as may be necessary to meet the repurchase obligations as to the shares of such members as may present said shares to said association for repurchase by it, and that this Honorable Court issue an Order to show cause to each and all of said defendants requiring them to show

cause upon a specified date why a preliminary injunction should not be made enjoining and restraining them, and each of them, during the pendency of this action from making any such transfers, and further that said defendants, and each and all of them be also enjoined and restrained from merging consolidating, reorganizing, or in any other matter uniting or commingling the assets, membership shares, members, or any other persons or property of the said Long Beach Federal Savings and Loan Association, nor any part thereof, with any other organization, bank, corporation, association or institution, whatsoever, and that such injunctions be continued in force during the pendency of this action and that in said final judgment, said injunction be made permanent.

51 7. That Order be made that plaintiffs recover their costs and expenses from the said defendants and each of them.

And, for such other further different and general relief as this Honorable Court may deem meet and just in the premises.

WESTOVER & SMITH,
By WYCKOFF WESTOVER,

56 District Court of the United States

[Title omitted.]

Summons

To the above named Defendant: A. V. Ammann, individually, A. V. Ammann, as the purported Conservator for the Long Beach Federal Savings & Loan Association:

You are hereby summoned and required to serve upon Westover & Smith, plaintiff's attorney, whose address is Suite 1007-1015, Pacific Southwest Building, 215 W. Sixth St., Los Angeles 14, California, an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default

will be taken against you for the relief demanded in the complaint.

[SEAL OF COURT]

EDMUND L. SMITH,
Clerk of Court.
By Edward F. Drew,
EDWARD F. DREW,
Deputy Clerk.

Date: 5/28/46.

57 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Sou. District of Calif., ss:

I hereby certify and return that I served the annexed Restraining Order and Notice of Motion on the thereinnamed for John H. Fahey as Chairman of the Federal Home Loan Bank and A. V. Ammann, as the purported Conservator for the Long Beach Federal Savings and Loan Association by Mailing by registered mail to and leaving a true and correct copy thereof with the Attorney General at Washington, D. C., personally at Los Angeles, in said District on the 29th day of May, 1946.

ROBERT E. CLARK,
U.S. Marshal.
By F. B. MANHART,
Deputy.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Sou. District of Calif., ss:

I hereby certify and return that I served the annexed Restraining Order and Notice of Motion on the thereinnamed for John H. Fahey as Chairman of the Federal Home Loan Bank and A. V. Ammann, as the purported Conservator for the Long Beach Federal Savings and Loan Association by handing to and leaving a true and correct copy thereof with Ronald Walker, Asst. U. S.

Attorney personally at Los Angeles, in said District on the 29th day of May, 1946.

ROBERT E. CLARK,
U.S. Marshal.
By F. B. MANHART,
Deputy.

58 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Sou. District of Calif., ss:

I hereby certify and return that I served the annexed Summons and Complaint, Restraining Order and Notice of Motion on the therein-named A. V. Ammann, individually and A. V. Ammann as the purported Conservator for the Long Beach Federal Savings and Loan Association, by handing to and leaving a true and correct copies thereof with A. V. Ammann at Los Angeles, California, in said District on the 28th day of May, 1946.

_____,
U.S. Marshal.

_____,
Deputy.

59 29278. 53. 111. No. 5421-PH. District Court of the United States, Southern District of California. Mallonee, et al, v. Fahey, et al. Summons in Civil Action. Returnable not later than 60 days after service. Filed May 31, 1946. Edmund L. Smith, Clerk. By J. M. Enstrom, Jr., Deputy Clerk. Westover & Smith, Attorney for Plaintiff.

60 District Court of the United States

[Title omitted.]

Summons

To the above named Defendant: John H. Fahey, individually:

You are hereby summoned and required to serve upon Westover & Smith, plaintiff's attorneys, whose address is

Suite 1007-1015, Pacific Southwest Building, 215 West Sixth Street, Los Angeles 14, California, an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[SEAL OF COURT]

EDMUND L. SMITH,
Clerk of Court.
By Edward F. Drew,
EDWARD F. DREW,
Deputy Clerk.

Date: 5/28/46.

61 RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 28th day of May 1946, I received the within summons and returned same unexecuted as defendant is in Washington, D. C., May 31, 1946.

ROBERT E. CLARK,
United States Marshal.
By F. B. MANHART,
Deputy United States Marshal.

62 District Court of the United States

[Title omitted.]

Summons

To the above named Defendant: John H. Fahey as Chairman of the Federal Home Loan Bank Board:

You are hereby summoned and required to serve upon Westover and Smith, plaintiff's attorneys, whose address is Suite 1007-1015, Pacific Southwest Bldg., 215 W. Sixth Street, Los Angeles 14, California, in answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default

will be taken against you for the relief demanded in the complaint.

[SEAL OF COURT]

EDMUND L. SMITH,
Clerk of Court.
By Edward F. Drew,
EDWARD F. DREW,
Deputy Clerk.

Date: 5/28/46.

63 RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 28th day of May 1946, I received the within summons and returned same unexecuted, as defendant is in Washington, D. C., May 31, 1946.

ROBERT E. CLARK,
United States Marshal.
By F. B. MANHART,
Deputy United States Marshal.

70 In the District Court of the United States
Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Notice of motion for preliminary injunction
Filed May 27, 1946

To the Defendants, John H. Fahey, individually, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, individually, A. V. Ammann, as purported Conservator for Long Beach Federal Savings and Loan Association, and to the Long Beach Federal Savings and Loan Association and their attorneys:

You, and each of you, will please take notice that the plaintiffs in the above entitled matter will appear in the District Court of the United States, Southern District of California, Central Division, before the Honorable Judge Peirson M. Hall, at Courtroom No. —, in the United States Federal and Post Office Building, at Temple and

Spring Streets, in the City of Los Angeles, County of Los Angeles, State of California, on the 7th day of June, 1946, at the hour of 10 A. M. o'clock of said day, or as soon thereafter as counsel can be heard, and will
71 then and there present to the Honorable Court the following Motion, to wit:

"Now come the Plaintiffs in the above entitled action and move this Honorable Court for a preliminary injunction restraining and enjoining the defendants, each, all and every of them, and their servants, agents, employees, conservators and attorneys from directly or indirectly, during the pendency of the above entitled action, and until further order of this Honorable Court from merging, consolidating, reorganizing, or in any other matter uniting, or commingling the assets, membership shares, members, or other persons or property of the Long Beach Federal Savings and Loan Association, or any part thereof, with any other organization, bank, corporation or association or institution, whatsoever without the order of this Honorable Court so to do, being first had and obtained.

This above motion is made upon the grounds that unless restrained or enjoined by this Honorable Court from so doing, the defendants, John H. Fahey and A. V. Ammann, and/or the servants, agents, employees, conservators and attorneys, may merge, transfer, commingle, consolidate, reorganize or in any matter unite the assets, membership shares, members, or any other persons or property of the said Long Beach Federal Savings and Loan Association, nor any part thereof, with any other organizations, banks, corporations, associations or institutions, and thereby dissipate and break-up said association, its membership shares, members and organization by forcing its members to become members of other associations or other financial associations, without first affording to the plaintiffs, and all other shareholders of said Long Beach Federal Savings & Loan Association
72 a full, fair and impartial hearing to judicially determine the controversial issues involved in the litigation pending before this Honorable Court, and would thereby cause immediate irreparable injury, loss and damage to your Affiant and all other shareholder members

of the Long Beach Federal Savings and Loan Association.

This motion is made and based upon the Notice of Motion heretofore served and filed and upon the verified Complaint, Affidavits, Papers, Pleadings, records and files in this Action."

This Notice of Motion made and dated this 27th day of May, 1946, at Los Angeles.

WESTOVER & SMITH,
By WYCKOFF WESTOVER,
Attorneys for Plaintiffs.
PAUL MALLONEE, C. H. NEWHOUSE,
and WINNIE BUCKLIN,
Plaintiffs,
By Paul Mallonee,
PAUL MALLONEE.

73 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion for temporary restraining order
Filed May 27, 1946

Now come, the Plaintiffs in the above entitled action and move this Honorable Court for a temporary restraining order enjoining the defendants, each, all and every of them and their servants, agents, employees, conservators and attorneys from directly or indirectly, during the pendency of the above entitled action, and until further order of this Honorable Court from merging, consolidating, reorganizing, or in any other matter uniting, or commingling the assets, membership shares, members, or other persons or property of the Long Beach Federal Savings and Loan Association, of any part thereof, with any other organization, bank, corporation or association or institution, whatsoever without the order of this Honorable Court so to do, being first had and obtained.

This above motion is made upon the grounds that unless restrained or enjoined by this Honorable Court from so doing, the defendants, John H. Fahey and A. V. Ammann,

and/or servants, agents, employees, conservators
74 and attorneys, may merge, transfer, commingle consolidate; reorganize or in any matter unite the assets, membership shares, members, or any other persons or property of the said Long Beach Federal Savings and Loan Association, nor any part thereof, with any other organizations, banks, corporations, associations or institutions, and thereby dissipate and break-up said association, its membership shares, members and organization by forcing its members to become members of other associations or other financial associations, without first affording to the plaintiffs, and all other shareholders of said Long Beach Federal Savings and Loan Association a full, fair and impartial hearing to judicially determine the controversial issues involved in the litigation pending before this Honorable Court, and would thereby cause immediate irreparable injury, loss and damage to your Affiant and all other shareholder members of the Long Beach Federal Savings and Loan Association.

This motion is made and based upon the Verified Complaint, Affidavit, Papers, Pleadings, Records and Files in this Action.

Dated: This 27th day of May, 1946.

WESTOVER & SMITH,
By WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

75 In the District Court of the United States

[Title omitted.]

Affidavit

STATE OF CALIFORNIA;
County of Los Angeles, ss:

Paul Malloneé, being first duly sworn, deposes and says:

That she is a member of The Long Beach Federal Savings and Loan Association.

That he has been a member of said Association for more than five years next last past, and has had on deposit in said Association various sums of money in various amounts, and that the Association has uniformly and con-

sistently paid dividends to its shareholders, each and every year that your Affiant has been a member.

That since the 20th day of May, 1946 one A. V. Ammann, and various other persons claiming to be his employees and subordinates, and all purporting to act under authority of the Federal Home Loan Bank Administration, and the authority of one John H. Fahey,
76 have been in possession of and control of the said Long Beach Building and Loan Association and its assets; that since the said 20th day of May, 1946, your Affiant has observed large crowds of members and depositors at the office of the said Association and has observed lines of members and depositors, waiting in lines approximately a quarter of a block long, and has observed great numbers of members and depositors withdrawing their monies from said Long Beach Federal Savings and Loan Association.

Your affiant is informed and believes and upon such information and belief, affirms that on or about May 20th, 1946, the said A. V. Ammann, together with persons claiming to be his employees, deputies and subordinates, did appear at the offices of the Long Beach Federal Savings and Loan Association in Long Beach, and the said A. V. Ammann verbally announced that he had been appointed Conservator for the said Long Beach Federal Savings and Loan Association, and he and said other persons did then immediately take full possession and control of said Association and all of its assets which your Affiant is informed and believes and upon such information and belief, states did then aggregate in excess of twenty six millions of dollars.

That your Affiant is informed and believes and upon such information and belief, states that since May 20th, 1946, when it was seized by the said A. V. Ammann and his subordinates, purportedly acting under the purported authority of John H. Fahey, withdrawals from the Long Beach Federal Savings and Loan Association in the four days immediately following said seizure, ran as high as approximately $2,000,000.00 per day, and that the total aggregate of such withdrawals for the first five days after said seizure, was between six and seven millions of dollars.

Your Affiant is informed and believes, and upon such information and belief, states that on or about the 29th day of March, 1946, the said A. V. Ammann, purportedly acting for and on behalf of John H. Fahey, did seize the Federal Home Loan Bank of Los Angeles, closed the same and purportedly merged the same and its assets of approximately forty three millions of dollars ($43,000,000.00) into and with the Federal Home Loan Bank of Portland, and moved the thus purportedly merged two Federal Home Loan Banks, to the City of San Francisco.

That your Affiant is informed and believes, and upon such information and belief, states that unless prevented, restrained and enjoined from so doing by this Honorable Court, the said John H. Fahey and the said A. V. Ammann, intend to merge, transfer and commingle the assets of the said Long Beach Federal Savings and Loan Association to and with various other financial organizations, and thereby dissipate, break up, said Association, its membership shares and organization, by forcing its members to become members of other associations or other financial organizations.

That unless restrained and enjoined by this Honorable Court from so doing the contemplated acts of said John H. Fahey and A. V. Ammann, and their employees and/or subordinates, in consolidating, merging, reorganizing or uniting, or commingling the assets, membership shares, members or other persons or property of the Long Beach Federal Savings and Loan Association, or any part thereof, with any other organization, bank, corporation or association or institution, without first affording opportunity for a full; fair and impartial hearing upon the merits of all the controversial issues involved, would cause immediate irreparable injury, loss and damage to your Affiant and all other shareholder members of the Long Beach Federal Savings and Loan Association.

That your Affiant therefore respectfully requests that the said John H. Fahey, A. V. Ammann, and all other persons acting as their employees, agents and subordinates, or under their authority, being temporarily enjoined and preliminarily restrained, during the pendency of the above entitled action and until further order of

this Honorable Court, from merging, consolidating,
78 reorganizing or in any other manner uniting or commingling the assets, membership shares, members or any other persons or property of the Long Beach Federal Savings and Loan Association, or any part thereof, with any other organization, bank, corporation, association or institution whatsoever.

Further, your Affiant sayeth not.

Paul Mallonee,
PAUL MALLONEE.

Subscribed and sworn to before me this 27th day of May 1946.

MAXINE LAUREL BERWEILER,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Jan. 10, 1950.

79 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Restraining order
Filed May 27, 1946

Upon the reading of the verified Complaint and the Affidavits, Documents and Records on file herein, and it appearing that there is reason to believe that the defendants, or some of them, may dissipate and break up the Long Beach Federal Savings and Loan Association, its membership shares and organization, by merging, consolidating, reorganizing or uniting said Association, or commingling said Association's assets, membership shares, or members with other organizations, banks, corporations, associations or institutions, and would thereby cause immediate and irreparable injury, loss and damage to the plaintiffs and other shareholder members of the Long Beach Federal Savings and Loan Association; and for good cause shown,

It is hereby ordered that the defendants and each of them be, and they are hereby enjoined and restrained

from and of making, attempting to make, or instituting any merger, consolidation, re-organization of said Long Beach Federal Savings and Loan Association, and from and of making any transfers, assignments, conveyances of any and all of the assets thereof, which might effect or bring about such merger, consolidation and/or reorganization, and from and of uniting, commingling, joining or consolidating the securities, assets, cash, resources, properties, memberships shares of said Association, with those of any other association, bank, corporation, organization or institution whatsoever, without the order of this Court so to do first being had and obtained.

It is further hereby ordered for reasons above set forth that this temporary restraining order is granted without notice and shall expire at 10:00 o'clock A.M., on the 7th day of June, 1946, unless prior thereto for good cause shown this order is extended in accordance with Rule 65, subdivision B, of the Federal Court Rules.

Dated at Los Angeles, this 27 day of May, 1946. 4:55 P.M.

PEIRSON M. HALL,
Judge of the District Court of the United States.

Bond in accordance with Rule 65(c) is hereby fixed in the sum of $2,500.00.

PEIRSON M. HALL,
Judge.

5/27/46.

Judgment entered May 27, 1946. Docketed May 27, 1946. CO Book 38. Page 498.

EDMUND L. SMITH,
Clerk.

J. M. HORN,
Deputy.

84 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Stipulation for continuance of motion for temporary injunction

Filed June 4, 1946

It is hereby stipulated, by and between the plaintiffs, by and through their attorneys, Westover & Smith, by and with the defendant, A. V. Ammann, individually, and by and with the defendant, A. V. Ammann, as the purported Conservator for the Long Beach Federal Savings and Loan Association, by and through his attorneys, Charles H. Carr, United States Attorney, and Ronald Walker, Asst. U. S. Attorney at Los Angeles, as follows:

That hearing on the Motion for Preliminary Injunction, now noticed for hearing June 7, 1946, be continued for setting to Monday, June 24, 1946, at 10 o'clock A.M., in the Federal Building at Los Angeles, California, or to such other time thereafter as Counsel can be heard and as may be set by the Court.

That no objection is interposed on behalf of defendant, A. V. Amann to the continuance by the Court of the Temporary Restraining Order heretofore issued in this matter by the Honorable Peirson M. Hall, Judge of the District Court of the United States on the 27th day
85 of May 1946, until the said hearing and determination of the said Motion for Preliminary Injunction, or until further Order of the Court.

That the plaintiffs may have to and including June 14, 1946, to serve and file their written statement of reasons in support of their Motion for Preliminary Injunction, together with their Memorandum of Points and Authorities.

That the defendant, A. V. Ammann may have to and including the 21st day of June, 1946, to serve and file a brief, written statement of reasons and answering Memorandum of Points and Authorities in opposition thereto.

That the defendant, A. V. Ammann, individually, as well as the defendant, A. V. Ammann, as the purported

Conservator for the Long Beach Federal Savings and Loan Association, may have to and including July 29, 1946, to answer the Complaint on file herein.

That the filing of this stipulation shall be deemed to be a special appearance on behalf of the defendant, Ammann, individually and as conservator only for the purpose of obtaining a continuance of the hearing on the Motion for a Temporary Injunction, and shall not be deemed or construed as a general appearance by said defendant or be deemed to waive any rights which said defendant may have had prior to the filing of this stipulation.

Dated: At Los Angeles, this 4th day of June, 1946.

WESTOVER & SMITH,
By: (S) Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.
CHARLES H. CARR,
United States Attorney,
By: (S) Ronald Walker,
RONALD WALKER,
Assistante U. S. Attorney.
Attorneys for Defendant, A. V. Ammann, individually and A. V. Ammann as a purported Conservator for Long Beach Federal Savings and Loan Association, Defendant.

It is so ordered:

Let date of hearing on Preliminary Injunction be set for the — day of — 1946.

PEIRSON M. HALL,
Judge of the District Court of the United States.

86 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Answer and cross-claim in interpleader of Title Service Company, a corporation, sued as John Doe I

Filed June 4, 1946

87 Comes now, Title Service Company, a corporation, served herein as John Doe One, and for Answer, admits, denies and alleges:

I

Defendant, Title Service Company, admits service upon it of a copy of the summons and complaint in the above entitled and numbered action.

Defendant, Title Service Company, is a corporation, organized and existing under and by virtue of the laws of the State of California, and its principal place of business is in the City of Long Beach, County of Los Angeles, State of California, and is engaged in a general escrow, acting as trustee under deeds of trust and real estate business.

II

That Defendant, Title Service Company, has been named as trustee upon, among others, approximately 8000 separate deeds of trust conveying to it, as trustee, the legal title to the properties described in said deeds of trust in which the co-defendant, Long Beach Federal Savings & Loan Association is the named beneficiary; that the aggregate balance upon said deeds of trust is approximately $12,000,000.00.

III

That the Defendant, Long Beach Federal Savings & Loan Association, is a mutual thrift association having its principal place of business in the City of Long Beach, County of Los Angeles, State of California, and is therefore a resident of Central Division of the Southern District of California of the District Court of the United States.

IV

That said approximately 8000 deeds of trust are upon separate parcels of real property and affect and involve the validity of the title to approximately 8000 separate parcels of real property situated in the County of Los Angeles and State of California.

For a separate and distinct cause of cross-claim and interpleader against the defendant, John H. Fahey and all other remaining named defendants, Title Service Company, a corporation, severing itself from all other defendants, alleges:

(a) This action arises under the Fifth Amendment of the Constitution of the United States of America, in that Plaintiffs have been deprived of property in excess of Twenty-six million Dollars ($26,000,000.00), without due process of law as hereinafter more fully appears.

(b) This action also arises under and involves the interpretation and effect of the following acts of Congress of the United States of America:

1. "Home Owners Loan Act of 1933", as amended—Public No. 43—73rd Congress—48 Statutes 1932 (June 13, 1933—Chapter 64, Paragraph 1, 48 Statutes 128).

2. "Federal Home Loan Bank Act", as amended—Public No. 304—72nd Congress (July 22, 1932, Chapter 522, Paragraph 1, 47 Statutes 725 and amendments thereto).

3. "The National Housing Act"—Public No. 479 73rd Congress (June 27, 1934, Chapter 847, 48 Statutes 1246 and amendment thereto), and Regulations, rules and directives purportedly made and adopted pursuant to and under each and all of said Acts.

(c) This action involves amounts in controversy in excess exclusive of interest and costs, of the sum of Three Thousand ($3,000.00) Dollars, to-wit: involves amounts in controversy in excess of Twenty-six Million ($26,000,000.00) Dollars.

(d) This action also seeks injunctive relief to prevent the wrongful dissipation of private property in amounts in excess of Twenty-six Million ($26,000,000.00) Dollars, wrongfully taken without due process of law and to restrain the endorsement, operation and execution, in whole or in part, of Acts of Congress, upon the ground that such Acts or parts thereof, are repugnant to the Constitution of the United States, and Amendment V thereof, and therefore pursuant to the provisions of Section 380 (a) Title 28 of the Federal Judicial Code, this defendant respectfully request the senior Circuit Judge of the Ninth Judicial Circuit to immediately designate three (3) Judges to comprise the Court to hear this action as in said Section 380 (a) provided.

This action also arises under Title 28, Section 41, sub-

division 26, subsections a, b, c, d and e, of the Federal Judicial Code. Defendant, Title Service Company, a corporation, is a citizen of the State of California, Defendants, John H. Fahey and A. V. Ammann, are, Defendant is informed and believes, citizens of the District of Columbia, which is other than the State of California. The amount in controversy in the principal action, exceeds $500.00, and Defendant is informed and believes said sum amounts to approximately $26,000,000.00. The amount involved in Defendant's cross claims exceeds $500.00, to-wit: is approximately the sum of $12,000,000.00.

(c) That the Defendant, Long Beach Federal Savings and Loan Association, is a mutual thrift association, a citizen of the State of California, with its principal place of business in the City of Long Beach, County of Los Angeles, State of California, and is, therefore, a resident of the district wherein this Honorable Court is situated.

II

That Defendant, Title Service Company, has been named as Trustee upon, among others, approximately 8,000 separate deeds of trust conveying to it, as trustee, the legal title to the properties described in said deeds of trust in which the co-defendant, Long Beach Federal Savings and Loan Association is the named beneficiary; that the aggregate balance upon said deeds of trust is approximately $12,000,000.00.

III

The Defendant, Title Service Company, is acting as escrow holder under numerous escrows, in which Long Beach Federal Savings and Loan Association, is a party to said escrows, in various capacities, on some as seller of real property, on some as making loans upon real property, on others as buyer of real property and in various other capacities. The real property involved and effecting each and all of said escrows is situated in the County of Los Angeles, State of California.

IV

That this Defendant is informed and believes, and on that ground alleges, that the defendant, John H. Fahey, is the Federal Home Loan Bank Commissioner, and, in such capacity has purportedly appointed the Defendant, A. V. Ammann, as the Conservator of the Defendant, Long Beach Federal Savings and Loan Association; and has, with the Defendant, A. V. Ammann purportedly siezed control of said Long Beach Federal Savings and Loan Association.

V

That on or about the 31st day of May, 1946, 91 the Defendant, A. V. Ammann and John H. Fahey, delivered to Defendant, Title Service Company, 174 notes and deeds of trust, securing the same, together with 174 requests for reconveyance and instructions to said defendant, Title Service Company, to reconvey said property described in said deeds of trust, and to release it from the further operation and encumbrance of said deeds of trust. That each and all of said deeds of trust named Long Beach Federal Savings and Loan Association as beneficiary. That said requests for reconveyance were executed by the said A. V. Ammann, claiming he was Conservator under the authority of Defendant, John H. Fahey, for said Long Beach Federal Savings and Loan Association, but that no assignment, transfer or other documents, conveying title from the Long Beach Federal Savings and Loan Association to said A. V. Ammann, and/or John H. Fahey, were presented to said Defendant, Title Service Company.

VI

That the Defendant, Long Beach Federal Savings and Loan Association, has notified Defendant Title Service Company, in writing, that said A. V. Ammann's and/or John H. Fahey's purported authority to act for said Long Beach Federal Savings and Loan Association, is invalid and unconstitutional and that said authority is being attacked in the above entitled action in this Honorable District Court. That Defendant, Title Service

Company was, on or about the 4th day of June, 1946, duly served with a copy of said Complaint and the summons issued thereon.

VII

That said Defendant, Title Service Company, is thereby faced with conflicting, inconsistent and contrary demands in that the said A. V. Ammann demands that it issue reconveyances for said 174 trust deeds, with approximate face value of $800,000.00 and the said Long Beach Federal Savings and Loan Association named beneficiary in each and all of said deeds of trust, demands and orders the said Title Service Company not to issue such reconveyances and warns said Title Service Company that if such reconveyances are issued said Long Beach Federal Savings and Loan Association will hold it in damages for the total amount of said deeds of trust. Said Title Service Company, is not interested nor concerned with the said conflicting demands, said A. V. Ammann's claims to be Conservator for the said Long Beach Federal Savings and Loan Association, nor with the demands of said Long Beach Federal Savings and Loan Association, but said Defendant, Title Service Company will be imperiled whichever way it attempts to decide such controversy.

VIII

That Defendant herewith deposits with the registry of this Court, the 174 notes and deeds of trust securing the same, together with requests for reconveyances on each and all of them presented to it by the said A. V. Ammann, purporting to act as Conservator for Long Beach Federal Savings and Loan Association.

IX

That cross-claimant and defendant, Title Service Company, cannot deposit with said Honorable Court the other deeds of trust approximating 8,000 in number, in which it is named as trustee, and under which it has received a conveyance of legal title to real property described therein, because said deeds of trust, together with notes

securing the same, are, Title Service Company is informed and believes, and therefore alleges, in the possession of, or under the control of said A. V. Ammann, and/or John H. Fahey. Cross-claimant and Defendant, Title Service Company therefore requests this Honorable Court to direct said Defendants and each of them to so deposit each and all of said notes and deeds of trust with the registry of this Court forthwith, or as the same are presented by them in the future for reconveyance or reconveyances.

X

That it was necessary for cross claimant and Defendant, Title Service Company, to file this cross-claim
93 in interpleader, in order to avoid a multiplicity of actions and to avoid unnecessary costs, attorneys' fees and expenses of suit, and to prevent irreparable damage to cross claimant and defendant, Title Service Company, by reason of being subjected to vexation and multiple liability upon obligations which could exist only in favor of one of said other defendants. That it was and is necessary for cross-claimant, and defendant, Title Service Company, to employ and it has employed Thomas and Wallace, duly licensed and practicing attorneys to prepare and file and prosecute this cross-claim in interpleader, and cross-claimant has agreed to pay said attorneys a reasonable fee for their services herein.

XI

That said approximate 8,000 deeds of trust, with approximate face value of $12,000,000.00, include several different forms of deeds of trust, some of which provide for a substitution of trustee by both parties hereto, to-wit: beneficiary and trustor, some of them provide for substitution by beneficiary, only upon the terms and conditions for substitution therein described, and other for substitution of trustee by beneficiaries upon a different set of terms and conditions. That such trust deeds provide that each and all of every request for reconveyance under said deeds of trust be executed by the beneficiary. That the purported and attempted substitution of trustee under said

deeds of trust, involve and require jurisdictional determination of the validity, authority and constitutionality of the appointment and authority of said A. V. Ammann, as purported Conservator of said Long Beach Federal Savings and Loan Association, appointed by the Defendant, John H. Fahey, and also involve and require the determination of the validity of the title, either thus conveyed or reconveyed by said substituted trustee or trustees, if any. That each and all of the approximately 8,000 parcels of real property involved in said controversies are situated in the County of Los Angeles, State of California, within the district of this Honorable District Court, of the United States.

94

XII

That said deeds of trust, and each and all of the same, provide that said trustee may appear in any action affecting the interests of any beneficiary, or the title to any real property conveyed to it by said deeds of trust and that its attorney fees in such action therein become a charge upon and an obligation secured by said deeds of trust and the owner of real property conveyed by said deeds of trust liable for attorneys fees, costs, etc. That the trustors and borrowers had no part in the inception of this litigation, and said cross claimant and defendant Title Service Company asks this Honorable Court to Order that its attorneys fees be paid either by Defendant, A. V. Ammann or by the Defendant, Long Beach Federal Savings and Loan Association, from the assets of said Association.

Wherefore, Defendant and Cross-claimant Title Service Company prays judgment as follows:

1. That the said Defendants and each and all of them be ordered by this Honorable Court to interplead and litigate with each other and with this answering Defendant and Cross-Claimant, their various conflicting claims to the said 174 trust deeds, with approximate face value of $80,000.00 deposited with the registry of this Honorable Court herewith.

2. That said Defendants be ordered to deposit in court, except as to 174 trust deeds, the balance of the 8,000 trust deeds, having an approximate face value of $12,000,000.00, which cross claimant is unable to now deposit with the

registry of this Honorable Court, for the reasons hereinbefore alleged and that said Defendants, John H. Faley and A. V. Ammann be required by this Honorable Court to deposit each and all of said additional deeds of trust together with notes securing same, with this Honorable Court, forthwith, or upon applying for reconveyances or substitution of trustees under any and all of the same.

3. That this Honorable Court adjudge and determine between the parties hereto their respective rights, title and interest in and to the said notes, deeds of trust and each and all of the same, including all those deposited herewith and those to be deposited in the future. That the Court adjudicate the validity of the conflicting claims of the said Defendants, Fahey and Amann and the said Defendant, Long Beach Federal Savings and Loan Association, thus set forth and presented to it.

4. That the cross claimant and defendant, Title Service Company, be instructed and ordered by this Honorable Court, as to its rights and duties as named trustee in each and all of said approximate 8,000 deeds of trust, aggregating in face value approximately $12,000,000.00, including not only those deposited herewith, but all others outstanding.

5. That the said Title Service Company be also instructed as to its duties, rights and obligations, both to the Long Beach Federal Savings and Loan Association and to said Defendants, Fahey and Ammann, as to all escrows, collections, loans, contracts and all other matters, dealings, or transactions it may in the future have, concerning the said Long Beach Federal Savings & Loan Association, affairs and the claims of the said A. V. Ammann, as purported Conservator for the said Long Beach Federal Savings and Loan Association.

6. That cross claimant and defendant, Title Service Company, be released and discharged of and from any and all responsibility and liability as trustee, escrow holder, or in any other manner or form whatsoever, arising out of any and all of its dealings with the said Long Beach Federal Savings and Loan Association, or said deeds of trust, or any and all of the same, except as directly adjudicated by Decree of this Court.

7. That cross claimant and Title Service Company
96 herein recover its costs and expenses and a further reasonable sum for attorneys' fees incurred, and their costs and expenses, and that said sum so allowed, together with beneficiary's costs and expenses be ordered paid by Defendants Fahey and Ammann and/or Long Beach Federal Savings and Loan Association from assets of said Association in possession of said defendants, or any and all of the same.

8. And for such other and further and different and general relief as to this Court may seem just and proper in the premises.

THOMAS AND WALLACE,
By H. O. Wallace,
H. O. WALLACE,
Attorneys for Defendant, Title Service Company.

97 [*Duly sworn to by Ethel L. Roberts; jurat omitted in printing.*]

100 District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Alias summons on cross-claim in interpleader

To the above named Defendants: John H. Fahey, individually, John H. Fahey, as Chairman of the Federal Home Loan Bank Board; A. V. Ammann, individually, A. V. Ammann, as the purported Conservator for the Long Beach Federal Savings and Loan Association.

You are hereby summoned and required to serve upon Thomas & Wallace, Attorneys for Title Service Company, a corp., sued as John Doe One, whose address is 602 Jergins Trust Building, Long Beach, California, an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by

default will be taken against you for the relief demanded in the complaint.

EDMUND L. SMITH,
Clerk of Court.
By Edward F. Drew,
EDWARD F. DREW,
Deputy Clerk.

[Seal of Court]

Date: June 10, 1946.

101 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Alias Summons on Cross-Claim in Interpleader, Copy of Answe- and Cross-Claim in Interpleader, and Order for Service of on the therein-named Absent Defendant.

John H. Fahey as Chairman of the Federal Home Loan Bank Board and A. V. Ammann, as the purported Conservator for the Long Beach Federal Savings and Loan Association of Long Beach, California, by mailing to and leaving true and correct copies thereof by registered mail to the Attorney General of the United States, Washington, D. C., personally at Los Angeles in said District on the 10th day of June, 1946.

ROBERT E. CLARK,
U. S. Marshal.
By FRED B. MANHART,
Deputy.

102 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Alias Summons on Cross-Claim in Interpleader, Copy of Answer and Cross-Claim in Interpleader, and Order for Service of on the therein-named Absent Defendant.

John H. Fahey as Chairman of the Federal Home Loan Bank Board and A. V. Ammann, as the purported Conservator for the Long Beach Federal Savings and Loan Association of Long Beach, California, by handing to and

leaving a true and correct copy thereof with Ronald Walker, Assistant U. S. Attorney authorized to accept service for the United States Attorney personally at Los Angeles in said District on the 10th day of June, 1946.

ROBERT E. CLARK,
U. S. Marshal.
By FRED B. MANHART,
Deputy.

104 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order continuing for the purpose of setting hearing date on motion for preliminary injunction and continuing temporary restraining order

Filed June 5, 1946

Upon reading of the Stipulation for Continuance and for continuing Temporary Restraining Order, by and between the Plaintiffs, by and through their attorneys, Westover & Smith, and by and with the defendants, A. V. Ammann, individually, and A. V. Amman, as the purported Conservator for the Long Beach Federal Savings and Loan Association, by and through his attorneys, Charles H. Carr, United States Attorney, and Ronald Walker, Asst. United States Attorney at Los Angeles, and from the verified Complaint, Affidavits, and records on file herein.

It appearing that there is reason to believe that the defendants or some of them may dissipate and break up the Long Beach Federal Savings and Loan Association, its membership shares, and organization by merging, consolidating, reorganizing or uniting said association or commingling said association assets, membership
105 shares or members with other organizations, banks, corporations, associations, or institutions, and that there would thereby be caused immediate and irreparable injury, loss and damage to the plaintiffs and other shareholder members of the said association, and for said cause shown, it is hereby ordered that the Motion for Preliminary Injunction now noticed for hearing for June 7,

1946, be continued for setting to Monday, June 24, 1946, at 10:00 o'clock A.M., in the Federal Building at Los Angeles, California;

It is further ordered that on or before the said setting date of June 24, 1946, the parties shall have filed written statements of their reasons in support of, and in opposition to said Motion for Preliminary Injunction, together with Points and Authorities, upon which the parties intend to rely.

It is further ordered that the Plaintiffs shall serve and file their Memorandum of Points and Authorities on or before June 14, 1946, and that the defendant, A. V. Ammann, shall serve and file his Points and Authorities on or before June 21, 1946, and the Plaintiffs shall have filed their Reply Points and Authorities on or before the setting hearing on June 24, 1946.

It is further ordered that all documents shall be filed in quadruplet for consideration by Court composed of Three Judges.

It is further hereby ordered that upon the findings above made and for the reasons above set forth that the Temporary Restraining Order heretofore made on the 27th day of May, 1946, be and it is hereby continued in full force and effect, until the hearing of, and the final determination of the said Motion for Preliminary Injunction or until further order of the Court.

Dated: At Los Angeles, this 5th day of June 1946.

Peirson M. Hall,
PEIRSON M. HALL,
Judge of the District Court
of the United States.

Approved as to Form this 5th day of June 1946.

CHARLES H. CARR,
U. S. Attorney.

By Ronald Walker,
RONALD L. WALKER,
Asst. U. S. Attorney,
Attorneys for Defendant, A. V. Ammann.

WESTOVER & SMITH,
By WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

106 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion for order upon absent defendants.
Filed June 5, 1946

107 Plaintiffs by their verified Complaint and Affidavit on file herein show to this Court that the above entitled action is one to enforce a claim to, and to remove encumberances, liens and a cloud from the title to real and personal property within this, the Southern District of California of the District Court of the United States; that the defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, are not inhabitants of, nor have they been found within the State of California, and they, nor neither of them, have voluntarily appeared in this action.

Wherefore, Plaintiffs move this Court for an order requiring the said absent defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, to appear, move or answer to the Plaintiffs' Complaint by a day certain to be designated by this Court and for the service of such order upon said absent defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, wherever found.

Dated: At Los Angeles, this 5th day of June, 1946.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for the Plaintiffs.

(This above Motion is made pursuant to the Provisions of Sections 118 of Title 28 of the United States Code—Judicial Code Section 57.)

108 In the District Court of the United States

[Title omitted.]

Affidavit for order directing absent defendants to appear

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Wyckoff Westover, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiffs in the above entitled action; that your affiant has been informed and believes and upon such information and belief alleges that J. H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, defendants in this action are not inhabitants of, nor residents of, nor to be found within this, the State of California, in which the above entitled District Court is held; although your affiant has made inquiry for, and has endeavored unsuccessfully to locate said defendants within the State of California; that neither of said defendants, John H. Fahey, individually, and John H. Fahey,
109 as Chairman of the Federal Home Loan Bank, has voluntarily appeared in this action, nor appeared in this action at all; that your affiant has been informed by the United States District Attorneys, Ronald L. Walker and Frank Wickhem that the said John H. Fahey is an inhabitant of the City of Washington, District of Columbia, and that as Chairman of the Federal Home Loan Bank Board, the said defendant, John H. Fahey has his principal office in the City of Washington, District of Columbia, and the said United States Attorneys have stated to your affiant that they are not authorized to accept service of the above entitled complaint for, or on behalf of the said John H. Fahey, either individually, nor for, or on behalf of the said John H. Fahey, as Chairman of the Federal Home Loan Bank Board; that said defendants have no offices, agent or representative within

this State authorized to accept service of complaint for, and on behalf of the said defendants in this action.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
One of the Attorneys for Plaintiffs.

Subscribed and sworn to before me this 5th day of June 1946.

MAXINE LAUREL BERWEILER,
Notary Public in and for said County and State.

My commission expires Jan. 10, 1950.

110 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order for service on absent defendants, certificate thereto, and return of service by deputy marshal

Filed June 5, 1946

111 Upon motion of plaintiffs' attorney, it appearing to the Court that this is an action to enforce a claim to and to remove encumbrances and clouds from the title to real and personal property within this district, and that the defendants John H. Fahey, individually and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, are not inhabitants of, or found within this state, and that they have not voluntarily appeared to this action, it is ordered that said defendants appear, move, or answer to plaintiffs' complaint by the 19th day of August, 1946, and in default thereof that the Court proceed to the hearing and adjudication of said action, and that a copy of this order be served on said defendants wherever found.

Dated: June 5th, 1946.

Peirson M. Hall,
PEIRSON M. HALL,
Judge of the District Court of the United States.

Certificate to order

The United States of America, Southern District of California Central Division

I, Edmund L. Smith, Clerk of the District Court of the United States, for the District aforesaid, do hereby certify the above and foregoing to be a full, true and correct copy of an order made and entered of record in the above styled case on the 5th day of June, 1946.

112 In testimony whereof I have hereunto set my hand and affixed the Seal of said Court, at my office in the City of Los Angeles, County of Los Angeles, State of California, this 7 day of June, 1946.

[COURT SEAL]

EDMUND L. SMITH,
Clerk.

By EDWARD F. DREW,
Deputy.

OFFICER'S RETURN
Filed Oct 10 1946

UNITED STATES OF AMERICA,
District of Columbia:

Edgar J. McCloy, being duly sworn on his oath, says that he is a Deputy Marshal of the United States for the District of Columbia:

That he did on the 26th day of June, 1946, serve a copy of the Summons and Complaint herein, and a copy of the Order made and entered in the within cause, on the 26th day of June, 1946, on John H. Fahey, individually, and upon John H. Fahey, as Chairman of the Federal Home Loan Bank Board, by giving the said copies to the said John H. Fahey, at First St. and Indiana Ave. N.W., in the said District of Columbia.

EDGAR J. McCLOY,
Deputy United States Marshal.

Subscribed and sworn to before me this 27th day of June, 1946.

LILLIAN A. TRAMMELL,
Notary Public, D.C.

113 District Court of the United States

[Title omitted.]

Alias summons

To the above named Defendant: John H. Fahey, as Chairman of the Federal Home Loan Bank Board:

You are hereby summoned and required to serve upon Westover and Smith, plaintiff's attorneys, whose address is Suite 1007-1015, Pacific Southwest Bldg., 215 W. Sixth Street, Los Angeles 14, California, an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[SEAL OF COURT]

EDMUND L. SMITH,
Clerk of Court.

By Edward F. Drew,
EDWARD F. DREW,
Deputy Clerk.

Date: 6/5/46.

114 *Substitute affidavit*

DISTRICT OF COLUMBIA, ss:

Edgar J. McCloy, being duly sworn, deposes and says that he is and was at the time of service of the papers herein referred to a citizen of the United States, over the age of twenty-one years, and that he is and was at said time a duly qualified deputy United States marshal in and for the District of Columbia and legally authorized to serve court process in said District.

That on the 26th day of June, 1946, in the City of Washington, District of Columbia, he personally served the Complaint and Order in the above-entitled action upon the defendant John H. Fahey individually and the Summons, Complaint and Order in the above-entitled action upon the defendant John H. Fahey as Chairman of the Federal Home Loan Bank Board by handing to and leaving

true copies of said papers with said defendant John H. Fahey personally.

He further says that he knew the person so served as aforesaid to be one of the defendants in said action and the person mentioned and described in said papers as one of the defendants.

EDGAR J. MCCLOY,
Deputy U. S. Marshal, District of Columbia.

Subscribed and sworn to before me this 7th day of October, 1946.

LILLIAN A. TRAMMELL,
Notary Public, D.C.

115 In the District Court of the United States

Motion for order upon absent defendants
Filed June 10, 1946

116 Defendant and Cross-Cl*imana*nt in Interpleader, Title Service Company, a corporation, sued herein as John Doe One, by its verified Answer and Cross-Claim on file herein shows to this Court that its appearance in said action is to obtain an adjudication of the respective rights of the Defendants, John H. Fahey, both as an individual, if any, and as Chairman of the Federal Home Loan Bank Board and of A. V. Ammann, both as an individual, if any, and as the alleged and purported Conservator for the Long Beach Federal Savings and Loan Association, on the one hand and of the Defendant, Long Beach Federal Savings and Loan Association, on the other hand, in and to the 174 promissory notes for the approximate total sum of $800,250.00, and the 174 deeds of trust upon certain parcels of real property located in the County of Los Angeles and State of California, securing the payment of said promissory notes heretofore deposited with the registry of this Court by this Defendant; together with the respective rights of said parties in and to approximately 8000 other promissory notes for the approximate total sum of $12,000,000.00 and the approximately 8000 deeds of trust securing the payment of the same, all of which said deeds of trust being upon parcels of real property located in the County of Los Angeles and State of California, but which

said approximately 8000 promissory notes and deeds of trust are not in the possession or control of this Defendant—but upon all of which said deeds of trust, both 174 and approximately 8000 legal title has been conveyed to this Defendant in trust. That the Defendants, John H. Fahey, individually, and John H. Fahey as Chairman of the Federal Home Loan Bank Board, are not inhabitants of, nor have they been found within the State of California, and they, nor either of them, have voluntarily appeared in this action.

Wherefore, Defendant and Cross-Claimant, Title Service Company, a corporation moves this Court for an order requiring the said absent Defendants, John H. Fahey, individually and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, to appear, move or answer to this Defendant's Cross-Claim by a day certain to be designated by this Court and for the service of such order upon said absent Defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, wherever found.

Dated at Los Angeles, California, this 10th day of June, 1946.

THOMAS AND WALLACE,
By H. O. WALLACE,
Attorneys for Defendant and Cross-Claimant, Title Service Company, a corporation.

(The above motion is made pursuant to Section 41 (26) and 118 of Title 28 of the United States Code—Judicial Code Section 57.)

118 In the District Court of the United States.

[Title omitted.]

[File endorsement omitted.]

Affidavit for order directing absent defendants to appear
Filed June 10, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

H. O. Wallace, being first duly sworn, deposes and says: That he is one of the Attorneys for the Defendant, and Cross-Claimant in Interpleader, Title Service Company,

a corporation, sued herein as John Doe One; that your affiant has been informed and believes and upon such information and belief alleges, that J. H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, defendants in this action are not inhabitants of, nor residents of, nor to be found within this, the State of California, in which the above entitled District Court is held; although your affiant has
119 made inquiry for, and has endeavored unsuccessfully to locate said defendants within the State of California; that neither of said Defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank, has voluntarily appeared in this action, nor appeared in this action at all; that your affiant has been informed by the United States District Attorney, Ronald L. Walker, that said John H. Fahey, is an inhabitant of the City of Washington, District of Columbia, and that as Chairman of the Federal Home Loan Bank Board, the said defendant, John H. Fahey, has his principal office in the City of Washington, District of Columbia, and the said United States Attorneys have stated to your affiant that they are not authorized to accept service of the above entitled complaint for, or on behalf of the said John H. Fahey, either individually, nor for, or on behalf of the said John H. Fahey as Chairman of the Federal Home Loan Bank Board; that said defendants have no offices agent or representative within this State authorized to accept service of complaint for, and on behalf of the said Defendants in this action.

That in said Defendant's Cross-Claim in Interpleader there has been deposited with the registry of this Court 174 promissory notes and 174 deeds of trust securing the same, which said deeds of trust involve and affect the title to real property all of which is located in the County of Los Angeles and State of California; and that in addition thereto said Cross-Claim raises the question of and prays for the adjudication of the validity of the conflicting claims of the above named Defendants, and of the Defendant, Long Beach Federal Savings and Loan Association, involved in said 174 parcels of real property and that involved in approximately 8000 other deeds of trust upon real property located in the County of Los Angeles, State

of California which said approximately 8000 deeds of trust secure the payment of an equal number of promis-
120 sory notes having a total value of approximately $12,000,000.

H. O. Wallace,
H. O. Wallace,
One of the Attorneys for Defendant and Cross-Claimant, Title Service Company, a corporation.

Subscribed and sworn to before me this 10 day of June, 1946.

[SEAL] Hazel Roberts,
Notary Public in and for said County and State.

121 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order for service on absent defendants, certificate thereto, and return of service by deputy marshal
Filed June 10, 1946

122 Upon motion of the attorneys for Defendant, Title Service Company, a corporation, served and sued herein as John Doe One, and it appearing to the Court that this is an action to enforce claims to and to remove encumbrances and clouds from title to real and personal property within this district, and certain evidences of such title having heretofore been deposited with this Court, in interpleader, by said Defendant, and certain other evidences of such title having been put into issue by said Defendant, and that the Defendants, John H. Fahey, individually and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, are not inhabitants of, or found within this State, and that they have not voluntarily appeared in this action, it is ordered that said Defendants appear, move or answer said Defendant's Cross-Claim in Interpleader by the 19th day of August, 1946, and in default thereof that the Court proceed to the hearing and

adjudication of said action, and that a copy of this order be served on said Defendants wherever found:

Dated: June 10th, 1946.

Peirson M. Hall,
PEIRSON M. HALL,
Judge of the District Court
of the United States.

123 CERTIFICATE TO ORDER

The District Court of the United States, Southern District of California, Central Division.

I, Edmund L. Smith, Clerk of the District Court of the United States, for the District aforesaid, do hereby certify the above and foregoing to be a full, true and correct copy of an order made and entered of record in the above styled cause on the 10 day of June, 1946.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Courts, at my office in the City of Los Angeles, State of California, this 10 day of June, 1946.

[SEAL OF THE COURT]

EDMUND L. SMITH,
Clerk.
By EDW. F. DREW,
Deputy.

Filed Oct. 11, 1946.

EDMUND L. SMITH,
Clerk.
By E. M. ENSTROM, JR.,
Deputy Clerk.

OFFICER'S RETURN

UNITED STATES OF AMERICA,
District of Columbia:

Edgar J. McCloy, being duly sworn on his oath, says that he is a Deputy Marshal of the United States for the ——— District of Columbia.

That he did on the 26th day of June, 1946, serve a copy of the Summons and Answer and Cross-Claim in Interpleader of the Defendant, Title Service Company, a corporation, herein, and a copy of the Order made and

entered in the within cause on the 26th day of June, 1946, on John H. Fahey, individually, and upon John H. Fahey, as Chairman of the Federal Home Loan Bank Board, by giving the said copies to the said John H. Fahey at First St. and Indiana Ave. NW in the said ——— District of Columbia.

EDGAR J. McCLOY,
Deputy United States Marshal.

Subscribed and sworn to before me this 27th day of June, 1946.

LILLIAN A. TRAMMELL,
Notary Public, D. C.

124 *Substitute Affidavit*

[Title omitted.]

DISTRICT OF COLUMBIA, *ss:*

Edgar J. McCloy, being duly sworn, deposes and says that he is and was at the time of service of the papers herein referred to a citizen of the United States, over the age of twenty-one years, and that he is and was at said time a duly qualified deputy United States marshal in and for the District of Columbia and legally authorized to serve court process in said District.

That on the 26th day of June, 1946, in the City of Washington, District of Columbia, he personally served the Summons, Answer and Cross-Claim in interpleader of the defendant Title Service Company, and Order in the above-entitled action upon the defendant John H. Fahey individually and upon John H. Fahey as Chairman of the Federal Home Loan Board by handing to and leaving true copies of said papers with said defendant John H. Fahey personally.

He further says that he knew the person so served as aforesaid to be one of the defendants in said action and the person mentioned and described in said papers as one of the defendants.

EDGAR J. McCLOY,
Deputy U. S. Marshal, District of Columbia.

Subscribed and sworn to before me this 7th day of October, 1946.

LILLIAN A. TRAMMELL,
Notary Public, D. C.

125 *In the District Court of the United States*

[Title omitted.]

[File endorsement omitted.]

Answer and cross claim in interpleader of Robert H. Wallis, sued as John Doe Two

Filed June 12, 1946

126 Comes now Robert H. Wallis, sued herein as John Doe Two and for answer, denies, admits and alleges as follows:

I

Defendant Robert H. Wallis admits receipt of a copy of the Summons and Complaint in the above entitled and numbered action.

For a separate and distinct cause of cross claim and interpleader against the defendants John H. Fahey, A. V. Ammann, and all other remaining named Defendants, Robert H. Wallis, severing himself from all other defendants, alleges:

I

(a) This action arises under the Fifth Amendment of the Constitution of the United States of America in that Plaintiffs have been deprived of property in excess of Twenty-six Million ($26,000,000) Dollars without due process of law as hereinafter more fully appears.

(b) This action also arises under and involves the interpretation and effect of the following Acts of Congress of the United States of America:

(1) "Home Owners Loan Act of 1933", as amended—Public No. 43—73rd Congress—48 Statutes 132 (June 13, 1933—Chapter 64, Paragraph 1, 48 Statutes 128)

127 (2) "Federal Home Loan Bank Act", as amended—Public No. 304—72nd Congress (July 22, 1932, Chapter 522, Paragraph 1, 47 Statutes, 725 and Amendments thereto).

(3) "The National Housing Act"—Public No. 479—73rd Congress (June 27, 1934, Chapter 837, 48 Statutes, 1246 and amendment thereto), and

(4) Regulations, rules and directives purportedly made

and adopted pursuant to and under each and all of said Acts.

(c) This action involves amounts in controversy in excess, exclusive of interest and costs, of the sum of Three Thousand ($3,000.00) Dollars, to wit: involves amounts in controversy in excess of Twenty-six Million ($26,000,000.00) Dollars.

(d) This action also seeks injunctive relief to prevent the wrongful dissipation of private property in amounts in excess of Twenty-six Million ($26,000,000.00) Dollars, wrongfully taken without due process of law and to restrain the enforcement, operation and execution, in whole or in part, of Acts of Congress, upon the ground that such Acts or parts thereof, are repugnant to the Constitution of the United States, and Amendment V thereof, and therefore pursuant to the provisions of Section 380 (a) of Title 28 of the Federal Judicial Code, the Plaintiffs respectfuliy request the senior Circuit Judge of the Ninth Judicial Circuit to immediately designate three (3) Judges to comprise the Court to hear this action as in said Section 380 (a) provided.

This action also arises under Title 28, Section 41, subdivision 26, subsections 2, b, c, d, and e, of the Federal Judicial Code. Defendant, Robert H. Wallis, is a citizen of the State of California, defendants John H. Fahey and A. V Afamann are, defendant is informed and believes, citizens of the District of Columbia, which is other than the State of California.

128 (e) That the Defendant, Long Beach Federal Savings and Loan Association, is a mutual thrift association, a citizen of the State of California, with its principal place of business in the City of Long Beach, County of Los Angeles, State of California, and is, therefore, a resident of the district wherein this Honorable Court is situated.

That the amount in controversy in the principal action exceeds $500.00 and defendant is informed and believes said sum amounts to approximately $26,000,000.00. The amount involved in defendant Robert H. Wallis' cross-claims exceeds $500.00, to-wit: is approximately in the sum of $50,000.00.

II

That defendant Robert H. Wallis is a duly licensed and qualified attorney at law licensed to practice in all the Courts in the State of California, the District Courts of the United States, and various other jurisdictions.

III

That this defendant is informed and believes, and therefore alleges, that the defendant, John H. Fahey, is the Federal Home Loan Bank Commissioner, and, in such capacity has purportedly appointed the defendant, A. V. Ammann, as the Conservator of the defendant Long Beach Federal Savings and Loan Association; and has, with the said defendant, A. V. Ammann unlawfully seized control of said Long Beach Federal Savings and Loan Association.

IV

That defendant and cross-complainant Robert H. Wallis was, and is, acting as attorney for defendant Long Beach Federal Savings and Loan Association, in connection with said Long Beach Federal Savings and Loan Association's disputes and litigation with the Federal Home Loan Bank Administration and with defendants John H. Fahey, A. V. Ammann and their various deputies and assistants, both in connection with the unauthorized and unlawful
129 seizure of the Federal Home Loan Bank of Los Angeles by said defendant John H. Fahey and also in connection with the unauthorized and unlawful seizure of the Long Beach Federal Savings and Loan Association by the said John H. Fahey, et al.

V

That T. A. Gregory, President of the Long Beach Federal Savings and Loan Association was a member of the Board of Directors of the Federal Home Loan Bank of Los Angeles and was active in the resistance of said bank and of said board of directors to the usurpation of their authority by the said John H. Fahey.

That defendant and cross-complainant is informed and believes and therefore alleges that in such resistance to

said usurpation, the said President of the said Long Beach Federal Savings and Loan Association and the said association itself incurred the enmity, malice and vengeance of the said John H. Fahey, as a result of which during the months of April and May, 1946, said association and its officers and directors anticipated and expected the said Long Beach Federal Savings and Loan Association would be seized and confiscated by the said John H. Fahey out of malice, spite and vengeance and because of him, the said John H. Fahey's personal animosity towards the said Long Beach Federal Savings and Loan Association and its officers.

VI

That the said Long Beach Federal Savings and Loan Association was at all times solvent, had assets in excess of $26,000,000.00; had membership shares outstanding of about $22,000,000.00 and had a surplus reserves and undivided profits reserves of approximately $1,300,000.00.

That in the seizure of said Federal Home Loan Bank of Los Angeles by the said John H. Fahey, he immediately purported to merge and dissolve the said Federal Home Loan Bank of Los Angeles into another institution, to-wit: the Federal Home Loan Bank of Portland, thereby preventing or seeking to prevent any legal recourse, or appeal to the protection of the Courts, being made by said Federal Home Loan Bank of Los Angeles, its officers, directors, or members.

That the said officers and directors of the Long Beach Federal Savings and Loan Association anticipated and expected the said John H. Fahey would, without justification or right whatsoever, and as a reprisal and to prevent said association bringing litigation against him for seizure of the Federal Home Loan Bank of Los Angeles, of which said Long Beach Federal Savings and Loan Association was a member, also unlawfully and without authority, seize said Long Beach Federal Savings and Loan Association and immediately merge it and dissolve it into some other financial institution or institutions, thereby preventing said association from having recourse or appeal to the Courts for justice and protection. That in such expectation, said Association adopted various resolutions and took

various steps and made various arrangements to provide for attorneys' fees, Court costs, and other litigation expenses, which said association anticipated would be necessary in its appeal to the Courts for justice and protection from the vindictive and unwarranted destruction of said association by said John H. Fahey, et al.

VII

That during the month of May, 1946, a cashier's check was issued by the Farmers and Merchants Bank of Long Beach, in favor of this defendant and cross-complainant Robert H. Wallis, in the amount of $50,000.00, which said check said defendant Robert H. Wallis herewith deposits with the Registry of this Court. That said check was received by said defendant and cross-complainant Robert H. Wallis for attorneys' fees, costs and expenses, of himself as attorney for said Long Beach Federal Savings and Loan Association, for services rendered, ex-
131 penses incurred and made and also for additional services to be rendered by himself and other attorneys in the various jurisdictions including the Courts of the District of Columbia, and various Federal District Courts, the Supreme Court of the United States and such other Courts, tribunals and committees to which the said matters may be presented for and on behalf of said Long Beach Federal Savings and Loan Association.

That the Congress of the United States has caused various of its committees to investigate the actions of the said John H. Fahey in connection with the said unauthorized and illegal seizure of the Federal Home Loan Bank of Los Angeles and the unlawful and unauthorized seizure of the defendant Long Beach Federal Savings and Loan Association, among said committees being the Special Committee to Investigate Executive Agencies.

VIII

That the said expectations and fears of the said association and its officers proved to be correct and on the 20th day of May, 1946, said defendant John H. Fahey, without reason or justification whatsoever, and without giving any excuse or pretext therefor, purported to

appoint said defendant A. V. Ammann as conservator of said Long Beach Federal Savings and Loan Association, and that on said date, the said defendant A. V. Ammann did forcibly and unlawfully seize and wrest control and possession of the said association, its assets, securities, books, records and property from its officers, directors and manager, who had been selected and appointed by the members of said association and who had served continuously as such from the time of the organization of said association in 1934 to the date of said unauthorized and unlawful seizure.

That three of the members of said association filed action as plaintiffs in this above entitled case and secured a restraining order from this Honorable Court preventing the said defendants, John H. Fahey, A. V. Ammann, et al. from merging, dissolving or transferring the assets of said Long Beach Federal Savings and Loan
132 Association, which restraining order is now pending and in force.

IX

That the defendants John H. Fahey and A. V. Ammann, et al, have attempted to use the appropriation of said $50,000.00 (made by said association to resist their malicious, vindictive and destructive acts and intentions) as a pretext to justify their said unlawful and arbitrary seizure and wresting of possession of said association from its said management.

That said defendants John H. Fahey and A. V. Ammann et al. attempt and purport to claim that said association had no right to defend itself, nor to appropriate any money for so doing and that they, said defendants, John H. Fahey and A. V. Ammann, personally, or as conservator, or in some other capacity, are entitled to, and owners of, the said check and the funds it represents.

X

That said defendant, Long Beach Federal Savings and Loan Association, insists and demands said check and the funds it represents must be used by defendant and cross-complainant Robert H. Wallis for the purpose for which it was appropriated; that is, for the resistance and

defense of said association against the illegal, unconstitutional and malicious attack made upon it by the said defendants John H. Fahey and A. V. Ammann and that said defendant Robert H. Wallis is required by said association to use said check in the payment of attorneys, Court costs, expenses of litigation, preparation and presentation of evidence to Congressional committees, hearings before various tribunals and generally for the protection and defense of said association from the attack of said defendants John H. Fahey and A. V. Ammann.

That in fulfillment of the purpose for which said appropriation was made and said check issued, said defendant Robert H. Wallis has incurred liabilities in various amounts to various firms of attorneys in Washington, D. C., in California, and will, in the future, incur additional expenses and indebtedness along similar lines.

133

That said defendant Robert H. Wallis is now engaged in preparation for the Congressional hearing which is scheduled for the immediate future, which said Congressional hearing will inquire into said seizures both of the Fedefal Home Loan Bank of Los Angeles and of the defendant Long Beach Federal Savings and Loan Association.

XI

That the said defendant Robert H. Wallis is thereby faced with conflicting, inconsistent and contrary demands, in that the said defendants John H. Fahey, A. V. Ammann, et al. demand the said fund, represented by said cashier's check, belongs to them and cannot be used by the said Robert H. Wallis for the purposes for which it was appropriated and delivered to him by the said Long Beach Federal Savings and Loan Association and also make the pretext that said appropriation and delivery is justification for their seizure of the said Long Beach Federal Savings and Loan Association, and the said Long Beach Federal Savings and Loan Association on its part instructs and demands that the said Robert H. Wallis use said funds for the protection of said association from the malicious and destructive attacks of the said John H. Fahey and A. V. Ammann upon it and for the restraining

and prevention of the said John H. Fahey and A. V. Ammann's merging and dissolving said association into some other or different associations or organizations.

That the said defendant Robert H. Wallis will be imperiled and will be faced with multiple litigation whichever way he attempts to decide such controversy.

That it was necessary for cross-complainant and defendant Robert H. Wallis to file this cross-claim in interpleader in order to avoid a multiplicity of actions and to avoid unnecessary costs, attorney fees and expenses
134 of suit and to prevent irreparable damage to said cross-complainant and defendant Robert H. Wallis by reason of being subjected to vexacious and multiple liabilities upon obligations which could exist only in favor of one or the other of said defendants.

XII.

Said defendant Robert H. Wallis will during the progress of the litigation between said defendants make applications to this Honorable Court for directions as to the disposition to be made of said funds, represented by said $50,000.00 Cashier's check and will ask said Court to make various allowances and distributions from the funds represented by said check to the various firms of attorneys, including himself, and others engaged in the defense and resistance of said Association to the said unlawful seizure and confiscation of said Long Beach Federal Savings and Loan Association by the said defendants John H. Fahey, A. V. Ammann, et al.

Wherefore, defendant and cross-complainant Robert H. Wallis prays judgment as follows:

1. That defendants John H. Fahey and A. V. Ammann and all other defendants, except Long Beach Federal Savings and Loan Association, be ordered by this Honorable Court to set forth and present their claims to the said check for $50,000.00 and the funds it represents and also their claims as to why the appropriation and issuance of said check are justification or grounds for said defendants John H. Fahey and A. V. Ammann's purported seizure of the said defendant Long Beach Federal Savings and Loan Association.

2. That said Long Beach Federal Savings and Loan Association be ordered to set forth and present its claims and demands that the said defendant Robert H. Wallis continue to use said fund and incur obligations upon it for the purpose for which it was appropriated; that in the defense of said association from the arbitrary and illegal attacks of the said John H. Fahey and A. V. Ammann upon said association.

135 3. That the said defendants, and each and all of them be ordered by this Honorable Court to interplead and litigate with each other and with this answering defendant and cross-complainant, their various conflicting claims to the said cashier's check for $50,000.00 and the funds it presents thereby and each and every part of the same, which said check is deposited with the Registry of this Honorable Court herewith.

4. That this Honorable Court adjudge and determine betwegn the parties hereto their respective rights, duties, titles and interest in and to the said check for $50,000.00 and each and every part of the same and that the Court adjudicate the validity of the conflicting claims thus set forth and presented to it.

5. That cross-claimant and defendant Robert H. Wallis be instructed and ordered by this Honorable Court as to his rights and duties in respect to said check for $50,000.00 and the funds represented thereby.

6. That cross-complainant and defendant Robert H. Wallis be released and discharged from any and all responsibilities and liabilities arising out of said check, said appropriation and the funds represented by said check except as directly adjudicated by decree of this Honorable Court.

7. That cross-complainant and defendant Robert H. Wallis recover his costs and expenses incurred herein.

8. That this Honorable Court upon application to it by the said Robert H. Wallis or by any of the parties interested therein make its order directing the said Robert H. Wallis to make such disposition of said check and its proceeds and to pay such parts or portions or all of the same to said persons and attorneys as said Court may determine (upon application or applications) to be entitled to part or all of said check under the terms of

the appropriation and issuance of said check as hereinabove set forth.

9. For such other and further and different and
136 general relief as to the Court may seem just and proper to the Court in the premises.

RAYMOND TREMAINE,
Attorney for Defendant and Cross-Complainant, Robert H. Wallis.

138 District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Alias summons on cross complaint of Robert H. Wallis

To the above named Defendant JOHN H. FAHEY, individually:

You are hereby summoned and required to serve upon Raymond Tremaine, plaintiff's attorney, whose address is 1007 I. N. Van Nuys Bldg., 210 W. 7th St., Los Angeles 14, Calif., an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

EDMUND L. SMITH,
Clerk of Court.
By Edward F. Drew,
EDWARD F. DREW,
Deputy Clerk.

[SEAL OF COURT]
Date: June 24, 1946.

139 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Alias Summons and Cross-Complaint on the therein-named John H. Fahey, individually by mailing a true and correct copy thereof to John H. Fahey, at Washing-

n D. C. by registered mail personally at Los Angeles in said District on the 27th day of June 1946.

ROBERT E. CLARK,
U. S. Marshal.
By J[illegible] BROWN,
Deputy.

140 District Court of the United States, Southern District of California. Mallonee, *v.* Fahey. Alias summons in civil action on cross-complaint. Returnable not later than 20 days after service. Filed, July 9, 1946. Edmund L. Smith, Clerk. By E. M. Enstrom, Jr., Deputy Clerk. Raymond Tremaine, Attorney for Plaintiff.

141 District Court of the United States

[Title omitted.]

Alias summons on cross-complaint of Robert H. Wallis

To the above named Defendant JOHN H. FAHEY, as Chairman of the Federal Home Loan Bank Board.

You are hereby summoned and required to serve upon Robert Tremaine, plaintiff's attorney, whose address is 1007 F. N. Van Nuys Bldg., 210 W. 7th St., Los Angeles 14, Calif., an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

EDMUND L. SMITH,
Clerk of Court.
By Edward F. Drew,
EDWARD F. DREW.
Deputy Clerk.

[SEAL OF COURT]

Date: June 24, 1946.

142 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Alias Summons and Cross-Complaint on the therein-

named John H. Fahey, as Chairman of the Federal Home Loan Bank Board by mailing a true and correct copy thereof to John H. Fahey, Chairman, Federal Home Loan Bank Board by registered mail to Washington, D. C. personally at Los Angeles in said District on the 27th day of June 1946.

ROBERT E. CLARK,
U. S. Marshal.
By DORIS BROWN,
Deputy.

143 District Court of the United States, Southern District of California. Mallonee, *v.* Fahey. Alias summons in civil action on cross-complaint. Returnable not later than 60 days after service. Filed, July 9, 1946. Edmund L. Smith, Clerk. By E. M. Enstrom, Jr., Deputy Clerk. Robert Tremaine, Attorney for Plaintiff.

144 In the District Court of the United States
Southern District of California—Central Division
Civil Action No. 5421-PH

Paul Mallonee, C. H. Newhouse, et al, plaintiffs, *v.* John H. Fahey, individually, John H. Fahey as Chairman of the Federal Home Loan Bank Board, et al.

Filed, Oct. 11, 1946.

EDMUND L. SMITH,
Clerk.
By E. M. ENSTROM, JR.,
Deputy Clerk.

DISTRICT OF COLUMBIA, *ss:*

Thomas R. East, being duly sworn, on his oath says that he is a Deputy United States Marshal for the District of Columbia.

That he did on the 27th day of June, 1916 serve a copy of the Answer and Cross-Claim in Interpleader of the defendant Robert R. Wallis on John H. Fahey individually and upon John H. Fahey as Chairman of the Federal Home Loan Bank Board, by giving the said

copies to the said John H. Fahey at First Street and Indiana Avenue NW in the said District of Columbia.

THOMAS R. EAST,
Deputy U. S. Marshal, District of Columbia.

Subscribed and sworn to before me this 27th day of June 1946.

LILLIAN A. TRAMMELL,
Notary Public, D. C.

145 District Court of the United States

[Title omitted.]

Alias summons of cross-complaint of Robert H. Wallis
To the above named Defendant, THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION OF LONG BEACH, CALIFORNIA,

You are hereby summoned and required to serve upon Robert Tremaine, plaintiff's attorney, whose address is 1007 I. N. Van Nuys Bldg., 210 W. 7th St., Los Angeles, 14, Calif., in answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

EDMUND L. SMITH,
Clerk of Court.
By Edward F. Drew,
EDWARD F. DREW,
Deputy Clerk.

[SEAL OF COURT]

Date: June 24, 1946.

146 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Alias Summons and Cross-Complaint on the therein-named The Long Beach Federal Savings and Loan Association of Long Beach California, by handing to and leaving a true and correct copy thereof with A. V. Amman.

authorized to accept service for the above-named association personally at Long Beach, Calif., in said District on the 27th day of June 1946.

ROBERT E. CLARK,
U. S. Marshal.
By J. P. LOVELLE,
Deputy.

147 District Court of the United States, Southern District of California. Mallonee, *v.* Fahey. Alias summons in civil action cross-complaint. Returnable not later than 20 days after service. Filed, July 9, 1946. Edmund L. Smith, Clerk. By E. M. Enstrom, Jr., Deputy Clerk. Raymond Tremaine, Attorney for Plaintiff.

155 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion for preliminary injunction, and to take testimony and evidence at the hearing thereof

Filed June 14, 1946

Come now, the Plaintiffs and complaining of the defendants, John H. Fahey, individually, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, individually, and A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, for grounds of Motion to be made for Preliminary Injunction state that:

Heretofore, on or about the 20th day of May, 1946, the defendant, A. V. Ammann, acting as purported Conservator allegedly under the appointment of the Federal Home Loan Bank Administration of which John H. Fahey is Chairman of the Board of the Federal Home Loan Bank, and as such is the sole administrator, did seize all the assets, records and documents of the Long Beach Federal Savings and Loan Association, having aggregate assets of approximately Twenty-six Million ($26,000,000.00) Dollars, and did take exclusive possession, control and management thereof, and did oust the duly elected and
156 qualified officers of said association, and ever since has and now does retain possession and control

of said Long Beach Federal Savings and Loan Association and its assets, books, records and documents; and

The said defendants, A. V. Ammann and John H. Fahey, having heretofore on or about March 29, 1946, seized the Federal Home Loan Bank of Los Angeles, and having forthwith immediately merged and consolidated it with the Federal Home Loan Bank of Portland, Oregon, and having commingled the assets of said two banks.

The Plaintiffs are informed and have reason to believe and do believe and upon such information and belief affirm that unless prevented, restrained and enjoined from so doing by this Honorable Court, the said John H. Fahey and A. V. Ammann intend to merge, transfer, commingle and consolidate the assets of the said Long Beach Federal Savings and Loan Association to, and with various other financial organizations and/or associations, and to thereby dissipate and break up said association, its membership shares and organization by forcing its members to become members of other associations or other financial organizations, and that the consolidating, merging, reorganizing, uniting or commingling of the assets, membership shares, members, or other persons or property of the Long Beach Federal Savings and Loan Association, or any part thereof, with any other organization, bank, corporation, association or institution without first affording an opportunity for a full, fair and impartial hearing before an impartial court upon the merits of all the controversial issues involved, would cause an immediate irreparable injury, loss and damage to the Plaintiffs and to all other shareholder members of the Long Beach Federal Savings and Loan Association, on behalf of whom the said Plaintiffs are here suing.

Wherefore, now come the Plaintiffs in the above entitled action and move this Honorable Court for a Preliminary Injunction restraining and enjoining the defendants, each, all and every of them, and their servants, agents,
157 employees, Conservators and attorneys from directly or indirectly, during the pendency of the above entitled action, and until further order of this Honorable Court, merging, consolidating, reorganizing, or in any other manner uniting or commingling the assets, membership shares, members or other persons or prop-

erty of the Long Beach Federal Savings and Loan Association, or any part thereof, with any other organizations, banks, corporations, associations, or institutions whatsoever without the order of this Honorable Court so to do being first had and obtained.

Further the Plaintiffs move this Honorable Court that it set a time and place for the hearing of the above Motion for Preliminary Injunction, at which time and place the many witnesses, residents in Southern California, may appear and testify in person.

The above motion is made and based upon the Notice of Motion for Preliminary Injunction heretofore served and filed and upon the verified Complaint, Affidavits, Records, Pleadings and Papers on file in this action, and upon the oral testimony of witnesses and Documents, Records and Files to be presented and introduced at said hearing on Motion for Preliminary Injunction.

In support hereof, there is attached hereto, Plaintiffs' summary statement of pertinent facts re Preliminary Injunction and Plaintiffs' Points and Authorities.

Dated at Los Angeles this 14 day of June 1946.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

158 Exhibit "A"

In the District Court of the United States

[Title omitted.]

Affidavit

159 STATE OF CALIFORNIA,
County of Los Angeles, ss:

Keith Linden, first being duly sworn, deposes and says: That he is by occupation Secretary to Congressman Ceel King, Representative of the Seventeenth Congressional District, State of California, and is not a member shareholder, or otherwise interested in or connected with the Long Beach Federal Savings and Loan Association.

That on the 20th day of May, 1946, affiant was present in the offices and premises of said Long Beach Federal Savings and Loan Association at 328 American Avenue, in the City of Long Beach, County of Los Angeles, State of California. That at said time and place, there were present numerous people not known to affiant. That known to affiant were the President T. A. Gregory of the Long Beach Federal Savings and Loan Association, one of the defendants in the above entitled action and A. V. Ammann who claimed to be an official of the Federal Home Loan Bank Administration. That there were also present numerous other strangers who A. V. Ammann claimed were his deputies.

Said A. V. Ammann notified said T. A. Gregory that the Long Beach Federal Savings and Loan Association was then and there seized and taken over. That the said T. A. Gregory demanded to know by what authority said seizure was made and asked for evidence of Court Orders or any other authorization or process for or ordering said seizure. That said A. V. Ammann verbally stated that an order had been issued in Washington, D. C. appointing him, the said A. V. Ammann, as conservator of said association and its assets. That he, the said A. V. Ammann did not need any Court Order or authorization whatsoever or any other process or authority. That his sole word was the law, and sufficient. That the said T. A. Gregory then requested a written evidence or copy of said order, and was refused the same. That finally, a type-
160 written sheet of paper was produced by the said A. V. Ammann, which he said had been typed from matter furnished over the telephone and he was not sure of its accuracy. At that time, said typewritten piece of paper bore no signature, seal or authentication of any sort whatsoever.

The said T. A. Gregory stated that there was millions of dollars in securities, bonds, cash and other assets, and that he refused to deliver them without some evidence or authority on the part of the person (Ammann) taking them. That the said A. V. Ammann said they were seized, regardless of delivery and if the said T. A. Gregory, or anyone else, touched anything in the institution, they would be liable to criminal prosecution.

That the said T. A. Gregory demanded some written proof of Ammann's statements. Whereupon, the said A. V. Ammann said, "I am an Assistant Secretary of the Federal Home Loan Bank Administration," and signed his own order authorizing his own seizure and assumption of possession over the entire association and all of its assets and delivered said typewritten document thus signed with no other authentication or verification whatsoever to the said President T. A. Gregory, and thereupon repeatedly threatened said President T. A. Gregory with criminal prosecution, unless he and every employee of said association immediately delivered and surrendered possession of all cash, securities, bonds and other assets to him, the said A. V. Ammann.

That the said T. A. Gregory demanded receipts, acknowledgements of what was seized and other evidences of what securities, cash, bonds, and other valuables were thus being wrested from his possession and was refused any such receipts or other acknowledgements of delivery of possession by the said A. V. Ammann. That said demands upon said A. V. Ammann were repeated on numerous occasions throughout the said 20th day of May, 1946, and on subsequent occasions.

That the auditor for said association, L. D. White,
161 one of the firm of F. W. LaFrantz, certified public accountants of Los Angeles and regular auditors for said association was also present and the said T. A. Gregory demanded that the said auditor be permitted to make itemized list of the bonds, cash, securities and property thus being seized from said association and the said A. V. Ammann refused and declined to permit anyone to make any such lists, receipts or detailed statements, notwithstanding the fact that the said President T. A. Gregory offered to personally pay the expenses of the independent auditor, or anyone else, preparing itemized lists of money, securities, bonds and valuables, thus being seized and wrested from his possession.

That the said A. V. Ammann took no inventory at any time, nor made any detailed list or statement of what was in said association, but within a very few minutes, after his seizure, said association was open to the public, and the money thus seized was used in disbursements, with-

drawals and the conduct of the association's business. That withdrawals were honored and many thousands of dollars were paid out from said institution within the hours of that day. That on the succeeding day, said association was thronged with withdrawing members and hundreds of thousands of dollars of the seized funds were paid out, amid great confusion, excitement and hysteria, all before any inventory, itemized statement or lists of the assets thus seized had been made.

That in the interview with the Press shortly thereafter, the said A. V. Ammann was asked, "Why are you here?" in the presence of affiant, to which said A. V. Ammann stated that said institution had $26,000,000.00 in assets, $22,000,000.00 of which were savings accounts, and was solvent and sound institution and there had been no impairment of assets of said association. That thereupon inquiry was made of the said A. V. Ammann as to why he was seizing said institution. Thereupon said A. V. Ammann replied, "If it gets in the papers we are here, it will tear down the institution because we
162 are here."

Further affiant sayeth not.

[S.] Keith Linden,
KEITH LINDEN.

Subscribed and sworn to before me this 8th day of June 1946.

I. A. MERRILL,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Nov. 25, 1947.

[SEAL]

163 *Exhibit "B"*

In the District Court of the United States

[Title omitted.]

Affidavit

164 STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ben O. Reddick, first being duly sworn, deposes and says: That he is a reporter for the Los Angeles Daily Examiner, a newspaper printed and published in the City of Los Angeles, State of California; that on the 20th day of May, 1946, he was personally present in the offices of the Long Beach Federal Savings and Loan Association at 328 American Avenue, in the City of Long Beach, County of Los Angeles, State of California: that also present at said time were A. V. Ammann, T. A. Gregory, President of said Long Beach Federal Savings and Loan Association, and numerous other persons.

That affiant and other representatives of the Press inquired of the said A. V. Ammann who he was and what he was doing at said association. Said A. V. Ammann replied he was the Conservator for said institution, appointed by the Federal Home Loan Bank Administration, and that numerous deputies were there at said institution with him. That said President T. A. Gregory then stated, "This association and its assets have been forcibly taken over by force of number; that I have not consented to the seizure." The said A. V. Ammann then replied, "I claim that I need no order of any Court. There is no signed order, and that you are penally liable if you refuse to give possession or hinder in any way. There are no specific charges. The order sets out the grounds. The association has gross assets of $26,000,000.00, $22,000,000.00 of which are savings. It is a sound and solvent going institution." Affiant then asked said A. V. Ammann, "Then why are you here?" and he, said A. V. Ammann, replied, "If it gets in the paper we are here, it will create a run and tear down the institution; that's why we are here." Affiant then asked, "Do you realize what you have said?" Said A. V. Ammann then repeated his former statement and stated further, "There are a

number of grounds upon which we could seize this
165 institution. I don't know which ground."

That then and there, in the presence of affiant, the said T. A. Gregory, President of said association, made demand upon the said A. V. Ammann for permission for L. D. White and his assistants who were auditors with the firm of F. W. LaFrantz and Company, regular auditors for said association, to make detailed lists and statements of the assets, cash, bonds and securities thus being seized by the said A. V. Ammann and that said permission was then and there refused, said A. V. Ammann saying, "Federal Home Loan Bank Administration is responsible for these assets," but the said A. V. Ammann continued to refuse to give any written receipt or acknowledgement of what assets or how much he was thus seizing and taking control of and also refused to permit any such list or inventory to be made by anyone.

That on said day of said seizure, to wit: the 20th day of May, 1946, affiant visited said association on numerous occasions. The said A. V. Ammann and his various deputies opened said association for business within a few minutes after said seizure and used the cash thus seized in the business of said association. That on the succeeding day and on other days, said association was thronged with members withdrawing their funds and a tremendous run developed; that affiant saw money in unknown amounts and denominations passed from hand to hand without receipt, without counting, and without any itemization, check lists, or other precautions taken. That one of the assistants of said A. V. Ammann mistaking affiant for an employee and another assistant shoved into his hands a huge wad of money, the amounts and denominations of which are unknown to affiant, as he rejected it immediately stating he was not employed there.

That the greatest confusion and hysteria prevailed among the employees of said association, among the deputies and representatives of said A. V. Ammann, all inter-mixed, throughout the throng of withdrawing depositors.

166 That during the days of said run, affiant, on several distinct occasions heard said association's officers and its auditors refused permission to make any

lists and heard them make repeated and insistent demands upon said A. V. Ammann, for receipts, itemized statements and inventories, each of which demands was refused so far as known to the affiant.

Further affiant sayeth not.

[S.] Ben O. Reddick,
BEN O. REDDICK.

Subscribed and sworn to before me this 8th day of June 1946.

[SEAL] I. A. MERRILL,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Nov. 25, 1947.

167 *Exhibit "C"*

Federal Home Loan Bank Administration

Order No. 5254.
Date: May 20, 1946.

Whereas, it has been determined that the Long Beach Federal Savings and Loan Association, Long Beach, California;

Is conducting its business in an unlawful manner;

Is conducting its business in an unauthorized manner;

Is conducting its business in an unsafe manner;

Has a management which is unsafe to manage a Federal Savings and Loan Association;

Has a management which is unfit to manage a Federal savings and loan association;

Is pursuing a course that is jeopardizing the interests of its members;

Is pursuing a course that is jeopardizing the interests of its creditors;

Is pursuing a course that is jeopardizing the interests of the public;

Is pursuing a course that is injurious to the interests of its members;

Is pursuing a course that is injurious to the interests of its creditors; and

Is pursuing a course that is injurious to the interests of the public; and

Whereas, it has been determined to be in the interest of said association, its members, creditors, and the public to appoint a conservator to take possession of said association and to conserve its assets pending further disposition of said association and its affairs;

Now, therefore, A. V. Ammann is hereby appointed conservator for the Long Beach Federal Savings and Loan Association, Long Beach, California, to take possession of said association and to conserve its assets pending further disposition of said association and its affairs; and, as such conservator, to have and exercise all of the powers and rights, enjoy all of the privileges, and assume and perform all of the duties and responsibilities of his office accorded or imposed by law, the Rules and Regulations for the Federal Savings and Loan System, and orders issued by the Federal Home Loan Bank Administration, or otherwise.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on May 20, 1946.

[SEAL] RAY E. DOUGHERTY,
Assistant Secretary.

168 Received copy of the within Motion for Prelim. inj. et al. this 14 day of June, 1946.

CHARLES H. CARR,
U. S. Atty.
By GERTRUDE M. JOHNSON,
Attorney for Defendant Ammann.

169 In the District Court of the United States

Notice of motion for hearing of motion for preliminary injunction on oral testimony

Filed June 14, 1946

170 To plaintiffs, Paul Mallonee, C. H. Newhouse and Winnie Bucklin, and their attorneys of record Westover and Smith; and

To defendants A. V. Ammann, and his attorneys, Charles H. Carr, United States Attorney and Ronald Walker, Assistant United States Attorney:

You, and each of you will please take notice that the plaintiffs in the above entitled matter will appear in the District Court of the United States, Southern District of California, Central Division, before the Honorable Judge Peirson M. Hall, at Courtroom No. —, in the United States Federal and Post Office Building at Temple and Spring Streets, in the City of Los Angeles, County of Los Angeles, State of California, on the 24th day of June, 1946, at the hour of 10:00 o'clock A.M. of said day, or as soon thereafter as counsel can be heard, and will then and there present to the Honorable Court the following Motion, to wit:

"Now comes the defendant, Long Beach Federal Savings and Loan Association in the above entitled action and moves this Honorable Court for an Order that plaintiffs' Motion for a Preliminary Injunction Restraining and enjoining the defendants from various acts be heard by the Honorable Court upon oral testimony in Court of
171 witnesses to be produced and subpoenaed to attend said hearing.

This above motion is made upon the grounds that the case involves constitutional questions of first impression and also involves the existence and welfare of an institution whose assets exceed $26,000,000.00 and the determination of which issues will directly affect the welfare of over 16,000 membership shareholders of said institution, residents of Los Angeles County and over 8,000 borrowers from said institution and will directly involve the title to, and the ownership of, eight to ten thousand separate parcels of real property, all situated in the County of Los Angeles, State of California, upon which said institution has various Trust Deeds, contracts and other encumbrances.

It is also made upon the further ground that circumstances surrounding the seizure of said institution are so oppressive, overreaching and so far exceed the bounds of all constitutional authority, that the good faith and motives of the defendants making said seizure are directly involved and can only be ascertained by cross-examination of all witnesses.

This motion is made and based upon the notice of motion heretofore served and filed, upon the verified

Complaint, pleadings, affidavits, papers, points and authorities and records and files in this action."

This Notice of Motion made and dated this 14th day of June, 1946, at Los Angeles, California.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant, Long Beach Federal Savings and Loan Association.

172 Point

The Court may hear a Motion based on facts not appearing of record either wholly or partly on oral testimony.

Authority

Rules of Civil Procedure for the District Courts of the United States, Rule 43.

"Evidence.

Subdivision e. Evidence on motions. When a motion is based on facts not appearing of record, the Court may hear the matter by affidavits presented by respective parties, *but the Court may direct that the matter be heard wholly or partly on oral testimony or deposition.*" [Italics added.]

Point

Where arbitrator or semi-judicial officer is accused of being partial to one side, hearing for motion concerning his qualifications on affidavits alone, without personal appearance of accused arbitrator and cross-examination of him, held reversible error.

Authority

Hyman vs. Pottbergs, Executors. United States Circuit Court of Appeals, 2nd Circuit, 101 F 2d 362 (1939). (also cites Rule 43 Subdivision e of Rules of Civil Procedure for the District Courts for the United States.

See also Stearns vs Success Portrait, 1 Federal Rules Decisions 503.

Hahn vs. Corley Manufacturing Company, 1 Federal Rules Decisions 505.

Respectfully Submitted,

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant, Long Beach Federal Savings and Loan Association.

173 In the District Court of the United States

[Title omitted.]

Affidavit supporting motion for hearing of preliminary injunction application on oral testimony

STATE OF CALIFORNIA,
County of Los Angeles, ss:

S. I. Bacon, first being duly sworn, deposes and says: That he is Vice-President, of Long Beach Federal Savings and Loan Association, one of the defendants in the above entitled proceedings. That he was personally present in the offices of said association on the 20th day of May, 1946, during the time said association was invaded and seized by the defendant A. V. Ammann and his various deputies.

That some other witnesses to said seizure, whose testimony should be presented at the hearing on said preliminary injunction matter, are:

T. A. Gregory, President of said association.

174 A. V. Ammann, Purported Conservator who seized said association.

Ben O. Reddick, of the Los Angeles Daily Examiner.

Keith Linden, Secretary to Honorable Congressman Cecil King.

That each and all of said witnesses are in the City of Washington, District of Columbia, in attendance upon a hearing before the Congress of the United States, inquiring into the validity of the said unwarranted and unlawful seizure of said Long Beach Federal Savings and Loan Association, and also inquiring into the prior unlawful and arbitrary seizure of the Federal Home Loan Bank of Los Angeles, which said seizure was made by the same defendants who seized the Long Beach Federal Savings and Loan Association.

That the testimony under subpoena upon cross-examination of A. V. Ammann and his various deputies who participated in and under his directions, made the seizure both of the Federal Home Loan Bank of Los Angeles, and of the Long Beach Federal Savings and Loan Association, is necessary and required by this Honorable Court to determine and adjudge the motives, good faith, manner, methods and conduct and the grossly oppressive

and arbitrary actions of said defendants, and each and all of them. That it is impossible to secure affidavits from the said defendants, A. V. Ammann, and his various deputies, but that they can be subpoenaed by this Honorable Court to give testimony at an oral hearing before it. That it is impossible to obtain the affidavits of the above listed witnesses because they are now absent from their usual place of residence in the County of Los Angeles, State of California, and information from which affidavits could be prepared cannot be obtained from them in time for the filing and presentation to this Honorable Court, ten days before said 24th day of June, 1946, as required by the rules of procedure of said Honorable Court.

175 The direct oral testimony of each and all of said witnesses personally present in Court and subject to cross-examination by various counsel is a vitally necessary prerequisite to adequately present to this Honorable Court the oppressive, arbitrary, malicious and vindictive acts by which said defendants made their unauthorized and illegal seizure of the assets of said Long Beach Federal Savings and Loan Association.

That it is also necessary to show by the testimony of said adverse witnesses that said seizure of said Long Beach Federal Savings and Loan Association was but a link in a chain of seizures, one of which was the seizure by said defendants, of the Federal Home Loan Bank of Los Angeles, another of which was the said seizure by said defendants of the Long Beach Federal Savings and Loan Association.

Wherefore, affiant respectfully prays that this Honorable Court order the hearing on said Motion for preliminary injunction to be upon oral testimony, before said Court as well as upon other evidence.

Further affiant sayeth not.

[SEAL] S. I. BACON.

Subscribed and sworn to before me this 14th day of June, 1946.

I. A. MERRILL,
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires Nov. 25, 1947.

177 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of service by mail upon John H. Fahey
Filed June 18, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Fay Dealey, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles, State of California; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is Room 1009, Pacific Southwest Building, 215 West Sixth Street, Los Angeles, California, that on the 14th day of June, 1946, affiant served Motion for Preliminary Injunction, and to Take Testimony and Evidence at the Hearinf thereof, with Summary Statement of Pertinent Facts, Re: Preliminary Injunction, Affidavits, Exhibits and Points and Authorities in the above entitled matter, on the defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, in said action, by placing a true copy thereof in an envelope addressed to John H. Fahey at his office address, as follows: Mr. John H. Fahey,
178 Federal Home Loan Bank Commissioner, Federal Home Loan Bank Building, Washington, D. C., and by then sealing said envelope and depositing the same, with registered postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the Attorneys for the Plaintiffs, by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, and there is a regular communication by mail between the place of mailing and the place so addressed.

Fay Dealey,
FAY DEALEY.

Subscribed and sworn to before me this 14th day of June, 1946.

MAXINE LAUREL BERWEILER,
Notary Public in and for the County of Los Angeles, State of California.
My Commission Expires Jan. 10, 1950.

181 In the District Court of the United States

[Title omitted.]

Motion to dismiss

Comes now the defendant above named, A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association, by and through his attorneys, Charles H. Carr, United States Attorney for the Southern District of California, Ronald Walker and Mildred L. Kluckhohn, Assistant U. S. Attorneys and moves the court to dismiss the above entitled action and Complaint.

This motion is made upon the grounds that the court is without jurisdiction over the person of John H. Fahey, an indispensable party to said action, and that the plaintiffs have failed to state a claim upon which relief can be granted.

This motion is based upon the records and files in the above entitled action, the Affidavit of Harold Lee, and the Points and Authorities attached hereto.

Dated June 14, 1946.

CHARLES H. CARR,
United States Attorney,
RONALD WALKER,
Assistant U. S. Attorney,
Mildred L. Kluckhohn,
MILDRED L. KLUCKHOHN,
Assistant U. S. Attorney,
Attorneys for Defendant, A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association.

MLK:fe.

182 In the District Court of the United States

[Title omitted.]

Affidavit of Harold Lee in support of motion to dismiss by defendant A. V. Ammann individually and defendant A. V. Ammann as the purported conservator for the Long Beach Federal Savings and Loan Association

UNITED STATES OF AMERICA,
District of Columbia, ss:

Harold Lee, of the City of Washington, District of Columbia, being first duly sworn on his oath, deposes and says:

That he now is, and since the 25th day of March, 1946, has been, the duly appointed, qualified and acting Deputy Federal Home Loan Bank Commissioner; that, as such, he has full and complete information of the facts herein stated;

That, on the 20th day of May 1946, the Federal Home Loan Bank Administration duly adopted and issued its Order No. 5254, on the grounds therein stated, appointing A. V. Ammann Conservator for the Long Beach Federal Savings and Loan Association; that copies of said order, duly certified by the Secretary to the

183 Federal Home Loan Bank Administration, were, on the 20th day of May 1946, mailed to said association and to each of the members of the board of directors thereof, each to the last known address as shown on the records of the Federal Home Loan Bank Administration; that on the 20th day of May, 1946, a certified copy of said order was, upon his demand therefor, handed personally to T. A. Gregory, president of said association;

That, on the 27th day of May 1946, the Secretary to the Federal Home Loan Bank Administration received at his office in Washington, D. C., a written demand, dated May 24, 1946, and signed by T. A. Gregory and J. E. Gregory, acting purportedly at the request of and in behalf of said association and its board of directors, for a more definite statement of the grounds stated in the order appointing said conservator;

That, on the 29th day of May 1946, this Affiant, as Deputy Federal Home Loan Bank Commissioner, caused

to be prepared the definite statement demanded, which was, on the 29th day of May, 1946, served by mailing to T. A. Gregory at Long Beach, California, by registered mail, a signed copy thereof, and by delivering to T. A. Gregory, personally, at Long Beach, California, the original thereof;

That, on the 3rd day of June 1946, the Secretary to the Federal Home Loan Bank Administration received at his office in Washington, D. C., a written Answer and Demand for Hearing, which Answer and Demand for Hearing was dated the 30th day of May, 1946, and signed by T. A. Gregory and J. E. Gregory, acting purportedly at the request of and in behalf of said association;

That, on the 5th day of June 1946, the Federal Home Loan Bank Administration duly adopted and issued its Order No. 5309, directing a hearing in accordance with the demand, and on June 5, 1946, notice of such hearing was duly served upon said association by mailing a copy of said order to it at the address which in the Answer and Demand for Hearing it was stated such notice should be sent;

That all arrangements on the part of the Federal Home Loan Bank Administration for holding said hear-
184 ing have been completed, and said hearing will be called and held in the City of Los Angeles, State of California, on the 3rd day of July 1946, in accordance with said Order No. 5309;

That the attached exhibits, marked Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E are full, true and complete copies of, respectively:

A. Federal Home Loan Bank Administration Order No. 5254.

B. Demand for More Definite Statement.

C. More Definite Statement.

D. Answer and Demand for Hearing.

E. Federal Home Loan Bank Administration Order No. 5309.

[S] HAROLD LEE.

Subscribed and sworn to before me this 12th day of June A. D. 1946.

My Commission Expires May 14, 1947.

[SEAL] [S] FREDERICK J. RAMSEY,
Notary Public.

185 *Exhibit "A"*

FEDERAL HOME LOAN BANK ADMINISTRATION

Order No. 3254. Date May 20, 1946

Whereas, it has been determined that the Long Beach Federal Savings and Loan Association, Long Beach, California:

Is conducting its business in an unlawful manner;

Is conducting its business in an unauthorized manner;

Is conducting its business in an unsafe manner;

Has a management which is unsafe to manage a Federal savings and loan association;

Has a management which is unfit to manage a Federal savings and loan association;

Is pursuing a course that is jeopardizing the interests of its members;

Is pursuing a course that is jeopardizing the interests of its creditors;

Is pursuing a course that is jeopardizing the interests of the public;

Is pursuing a course that is injurious to the interests of its members;

Is pursuing a course that is injurious to the interests of its creditors; and

Is pursuing a course that is injurious to the interests of the public; and

Whereas, it has been determined to be in the interest of said association, its members, creditors, and the public to appoint a conservator to take possession of said association and to conserve its assets pending further disposition of said association and its affairs:

Now, therefore, A. V. Ammann is hereby appointed conservator for the Long Beach Federal Savings and Loan Association, Long Beach, California, to take possession of said association and to conserve its assets pending further disposition of said association and its affairs; and, as such conservator, to have and exercise all of the powers and rights, enjoy all of the privileges, and assume and perform all of the duties and responsibilities of his office accorded or imposed by law, the Rules and Regulations for the Federal Savings and Loan System,

and orders issued by the Federal Home Loan Bank Administration, or otherwise.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on May 20, 1946.

[SEAL] J. FRANCIS MOORE,
Secretary.

186 *Exhibit "B"*

DEMAND FOR MORE DEFINITE STATEMENT OF CAUSE FOR APPOINTMENT OF CONSERVATOR OF LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION

Whereas, the undersigned, Long Beach Federal Savings and Loan Association of Long Beach, California, has not, by its Board of Directors, or otherwise, consented to or requested the appointment of either a conservator or receiver, nor either of them, nor any similar action, and

Whereas, one A. V. Ammann did, on the 20th day of May, 1946, physically seize and wrest possession of the said association, premises, assets, securities, bank accounts and books from the officers, directors and members of said association, claiming to be empowered and authorized to do so by an Order purportedly made by the Federal Home Loan Bank Administration as Order No. 5254, purportedly dated May 20, 1946, and purportedly signed by Ray V. Dougherty, assistant secretary, and

Whereas, the making of this Demand has been duly authorized and directed by a Resolution of the Board of Directors of said Long Beach Federal Savings and Loan Association at a meeting duly held for said purpose, and

Whereas, said Long Beach Federal Savings and Loan Association, its officers, directors and members, are unable to ascertain or determine from the said purported order, from the said A. V. Ammann, or from any other source whatsoever, the grounds, reasons, or basis for which, or upon which, its said premises, assets, securities and books have been thus seized and wrested from its possession and control,

Now therefore, pursuant to Section 206.2 of the Rules and Regulations of the Federal Savings and Loan

System heretofore adopted by the Federal Home Loan Bank Administration and by other governmental authorities, and also as a general demand independent of and in no way connected with said regulations or any of the same, demand is hereby made upon the Federal Home Loan Bank Administration, and upon the Honorable J. Francis Moore, Secretary thereof, and upon John H. Fahey, upon A. V. Ammann, upon Ray V. Dougherty, both individually and in whatever official capacities they, or any of them, may occupy, for a definite statement, and itemization of the grounds, causes and purposes of the said seizure of possession and control of the premises, properties, assets and securities of said corporation and of the purported appointment of a conservator therefor.

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This Demand is made without prejudice to the rights of said association and all its members, officers, directors, or other interested parties to assert the invalidity of said purported seizure of possession of the premises, assets, securities, etc. of said association and/or to assert the invalidity of the said purported appointment of the said A. V. Ammann as conservator of said association.

Address for the service of said statement and for the service of any and all other matters in connection with said Long Beach Federal Savings and Loan Association is hereby designated as follows: Long Beach Federal Savings and Loan Association c/o Its President, T. A. Gregory, 350 E. Fourth Street, Long Beach 2, California.

In witness whereof, the Long Beach Federal Savings and Loan Association, a corporation, has caused this Demand to be signed by its President and its Secretary-Treasurer this 24th day of May, 1946.

LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,

By T. A. GREGORY,
President.

By J. E. GREGORY,
Secretary-Treasurer.

MORE DEFINITE STATEMENT OF THE CAUSES FOR THE APPOINTMENT ON MAY 20, 1946, OF THE CONSERVATOR FOR LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, LONG BEACH, CALIFORNIA

T. A. GREGORY,
350 East Fourth Street,
Long Beach 2, California.

The following is a more definite statement of the causes for the appointment on May 20, 1946, of a Conservator of the Long Beach Federal Savings and Loan Association:

1. Said Association, in the opinion of the Federal Home Loan Bank Administration, was conducting its business in an unlawful, unauthorized, and unsafe manner, and was pursuing a course that was jeopardizing and injurious to the interests of its members, creditors, and the public in that:

(a) During the period from September 11, 1945, to March 7, 1946, disbursements of funds of said Association totaling $14,500 were made to its President, T. A. Gregory, without proper voucher therefor, or explanation thereof in the records of the Association, itemized as follows:

September 11, 1945, T. A. Gregory	$ 1,000.00
October 22, 1945, Wired to T. A. Gregory, Wash., D. C.	1,000.00
November 5, 1945, Wired to T. A. Gregory, Wash., D. C.	1,000.00
November 24, 1945, T. A. Gregory	1,000.00
December 1, 1945, Wired to T. A. Gregory, Wash., D. C.	2,000.00
January 19, 1946, T. A. Gregory	2,000.00
January 31, 1946, Cash (Wired to T. A. Gregory)	1,500.00
February 20, 1946, Cash (Wired to T. A. Gregory at Wash., D. C.)	2,000.00
February 28, 1946, Cash (Wired to T. A. Gregory at Wash., D. C.)	2,000.00
March 7, 1946, Cash (Wired to T. A. Gregory at Wash., D. C.)	1,000.00
Total	$14,500.00

(b) Disbursements totaling $14,500, itemized under (a), were used for purposes beyond the scope of the Association's business.

(c) Funds of the said Association totaling $2455.60

were disbursed to Howard S. Leroy, an attorney at
189 law at Washington, District of Columbia, on or about January 30, 1946, January 31, 1946, and March 6, 1946, although said attorney had not been retained by the said Association, nor were such funds paid to said attorney for the handling of any business of the said Association, or otherwise for the benefit of said Association.

(d) The Board of Directors of said Association attempted in the following manner to relieve T. A. Gregory from accountability to the said Association for its funds used by him for purposes beyond the scope of the said Association's business:

(1) The said Board of Directors, according to the minutes of a special meeting, dated January 16, 1946, voted to compensate T. A. Gregory, retroactively in the sum of $11,750 for services rendered by him in 1945, for which the said T. A. Gregory had already been paid in accordance with the terms of his employment.

(2) The said Board of Directors, according to the minutes of the special meeting, dated January 16, 1946, voted to increase T. A. Gregory's salary from $8250 to $20,000 per year.

(3) On April 6, 1946, reimbursement of said Association's funds paid to T. A. Gregory and used by him for purposes beyond the scope of the Association's business, was recorded on the books of said Association by means of an offset against the purported liability of the Association to T. A. Gregory for the said sum of $11,750 and for the voted increase for the first three months of 1946.

(e) The Association, by vote of its Board of Directors, purportedly on January 16, 1946, undertook to compensate T. A. Gregory retroactively in the sum of $11,750 for services rendered by him in 1945, for which the said T. A. Gregory had already been paid in accordance with the terms of his employment, said purported retroactive salary increase being unlawful and unauthorized.

(f) The Association paid salaries and fees which were excessive and not commensurate with the services rendered.

(g) The Board of Directors of said Association on
190 May 8, 1946, appropriated the sum of $100,000 of the funds of said Association for the purpose of

restraining the proper use of safeguards and controls provided by the Congress of the United States with respect to Federal Savings and Loan Associations, and threatened the removal of said sum from the proper control of said Association.

(h) During the course of a regular examination commencing on May 18, 1946, by Examiners of the Federal Home Loan Bank Administration, a director and officer of the said Association unlawfully and improperly removed a cashier's check in the amount of $50,000, payable to the said Association and representing funds belonging to it, without accounting therefor.

(i) On or about May 8, 1946, the said Association, through its officers, executed a purported lease on a hotel property located at 332 American Avenue, Long Beach, California, owned by it to one George Turner for a 20-year period on terms which, in effect, would give to the said Turner the use of said property without adequate consideration therefor to the said Association.

(j) Said Association was being used for the personal gain of one or more officers and directors thereof, to the detriment of its members and creditors.

(k) Said Association, through its officers, engaged in activities which were inimical to the interests of veterans of the Armed Forces, including veterans of the Armed Forces who were members of the said Association.

(l) Certain directors of the said Association, namely: T. A. Gregory, J. E. Gregory, M. T. Killingsworth and S. I. Bacon, on or about May 18, 1946, undertook to convert, or attempted to convert, their shareholdings and other funds totaling approximately $21,000 into approximately 21,000 separate purported share accounts of $1.00 each, in violation of the rights of over 16,000 share account holders of said Association, and in violation, or attempted violation of their duties as directors.

(m) Said Association failed to file copies of audit of said Association made by F. W. Lafrentz & Co., Certified Public Accountants, Los Angeles, California, as of the close of business May 19, 1945, or thereabouts, as required by Section 203.2 of the Rules and Regulations for the Federal Savings and Loan System.

(n) The said Association failed to maintain its books of accounts and records correctly.

(o) The records or statements of the Association were falsified in that either

(1) The minutes of the Board of Directors' meeting of January 16, 1946, were falsified by the entry therein of actions by said Board purporting to have been taken increasing T. A. Gregory's salary from $8250 to $20,000 per year, and purporting to authorize the payment of $11,750 to T. A. Gregory as extra compensation for the year 1945,

or

(2) The said Association's liabilities were misrepresented by the Board of Directors to the Federal Home Loan Bank Administration in monthly reports for the months ending January 31, 1946, February 28, 1946 and March 30, 1946.

2. Said Association, in the opinion of the Federal Home Loan Bank Administration, had a management which was unfit and unsafe to manage a Federal Savings and Loan Association in that, among other things,

(a) The matters set forth in sub-items (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (o) of Item 1, above are herein incorporated by reference.

(b) T. A. Gregory in 1934 (but only recently known to the Federal Home Loan Bank Administration) acquired control of the Reliable Building-Loan Association, Long Beach, California, and so manipulated its affairs that he was enabled to acquire, through the medium of Somerset Finance Co., a substantial number of certificates of the Reliable Building-Loan Association at a small fraction of their true value, and subsequently redeemed said certificates at the Reliable Building-Loan Association at their true value, while like treatment was denied to others, all to the detriment of the members of the said Reliable Building-Loan Association, and to his own personal gain.

(c) The officers of said Association failed to keep or cause to be kept the books of account and records of the Association correctly.

J. Albrich Hall,
Attorney for Federal Home Loan Bank Administration.

Dated: May 29, 1946.

193 *Exhibit "D"*

To: Federal Home Loan Bank Administration; Honorable J. Francis Moore, Secretary thereof; John H. Fahey, A. V. Ammann and Roy V. Dougherty, both individually and in whatever official capacities they, or any of them, may occupy.

DEMAND FOR HEARING PURSUANT TO SECTION 203.2 OF RULES AND REGULATIONS OF FEDERAL SAVINGS AND LOAN SYSTEM HERETOFORE ADOPTED BY FEDERAL HOME LOAN BANK ADMINISTRATION AND BY OTHER GOVERNMENTAL AUTHORITIES

194 ANSWER AND DEMAND FOR HEARING OF LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, LONG BEACH, CALIFORNIA

Whereas, the undersigned, Long Beach Federal Savings and Loan Association has not, by its Board of Directors, or otherwise consented to, or requested the appointment of, either a conservator or receiver, nor either of them, nor any other action, and

Whereas, one A. V. Ammann did, on the 20th day of May, 1946 physically seize and wrest possession of the said association, premises, assets, securities, bank accounts and books from the officers and members of said association, claiming to be empowered and authorized to do so by an Order purportedly made by the Federal Home Loan Bank Administration, as Order No. 5254, purportedly dated May 20, 1946, and purportedly signed by Ray V. Dougherty, assistant secretary, and

Whereas, a copy of Order No. 5254 purportedly issued by the Federal Home Loan Bank Administration purportedly dated May 20, 1946, was received by an officer of said association on or about the 23rd day of May, 1946, and said association has made demand upon the said Federal Home Loan Bank Administration, John H. Fahey A. V. Ammann and Ray V. Dougherty for a definite statement of grounds, reasons and causes of the purported seizure of the premises, assets, securities of said association, and

Whereas, the said association, its officers, members, directors and other interested parties are unable to ascertain from a copy of said purported order No. 5254, from the said John H. Fahey, A. V. Ammann, Ray V. Dougherty,

Federal Home Loan Bank Administration, or from any or all of them, any ground, reason, or justification whatever for the seizure of its said premises, and assets, of the purported appointment of the said A. V. Ammann as conservator of it, and

195 Whereas, the said purported order No. 5254 contains no facts whatsoever justifying said appointment, but merely states "unlawful", "unauthorized", "unsafe", "unfit", etc. as grounds for such order.

Now therefore, as answer to said Order, said Long Beach Federal Savings and Loan Association denies each and every statement in said Order contained individually, separately and severally, and further alleges that said association is solvent and has at all times been, and now is, solvent and able to pay in full all of its memberships, shares, creditors, and all other obligations and in addition thereto had at the time of the said purported seizure by the said A. V. Ammann a surplus above all other obligations of approximately One Million Three Hundred Thousand Dollars ($1,300,000.00).

Said association further alleges that its business has at all times, prior to its seizure by the said A. V. Ammann, been, and was then, conducted in a proper, authorized, safe and fit manner, in no way injurious to the interests of any person whomsoever and in no way jeopardizing the interests of any person whomsoever.

In addition, demand is hereby made for a hearing upon the matter of the purported appointment of said conservator and his purported seizure of possession and control of the assets, premises and securities of said association.

It is respectfully requested that said hearing be held in the District of the Federal Home Loan Bank, of which said Federal Association is a member, to-wit: Los Angeles, California, to which place of hearing (Los Angeles, California), consent is hereby given in writing.

Said association further reserves the right to file a supplementary, amended or different answer, when (if
196 ever) it has received definite charges, assertions, or allegations to which it can plead or answer.

The undersigned Board hereby vehemently states that it has not at any time, nor will it ever consent to, or request, the appointment of any conservator, nor of any

receiver, and that there are not now, and never have been, any grounds whatsoever for the appointment of such conservator, nor for the seizure of the assets of said association.

This Answer and Demand for Hearing is made without prejudice to the rights of said association and all its members, officers, directors, or other interested parties to assert the invalidity of said purported seizure of possession of the premises, assets, securities, etc. of said association and/or to assert the invalidity of the said purported appointment of the said A. V. Ammann as conservator of said association.

Address for the service of said Notice of said hearing and for the service of any and all other matters in connection with said Long Beach Federal Savings and Loan Association is hereby designated as follows: Long Beach Federal Savings and Loan Association, c/o its President, T. A. Gregory, 350 E. Fourth Street, Long Beach 2, California.

In witness whereof, the Long Beach Federal Savings and Loan Association, a corporation, has caused this Answer and Demand for Hearing to be signed by its President and its Secretary-Treasurer this 30th day of May, 1946.

LONG BEACH FEDERAL SAVINGS
AND LOAN ASSOCIATION,
By T. A. GREGORY,
President,
By J. E. GREGORY,
Secretary-Treasurer.

197 *Exhibit "E"*

FEDERAL HOME LOAN BANK ADMINISTRATION
Order No. 5309. Date June 5, 1946

Whereas, a conservator has been appointed for the Long Beach Federal Savings and Loan Association, Long Beach, California; and

Whereas, an answer has been filed and written demand made for a hearing, pursuant to Section 206.2 of the Rules and Regulations for the Federal Savings and Loan System:

It is hereby ordered, that a hearing shall be held at Room 510 Chester Williams Building, 215 West Fifth Street, Los Angeles, California, on Wednesday, the third day of July, 1946, at 10:00 o'clock in the forenoon, before a Hearing Officer, at which hearing the Long Beach Federal Savings and Loan Association, Long Beach, California, may appear and show cause why the conservator should not have been appointed and why an order should be entered by the Federal Home Loan Bank Administration discharging the conservator;

And it is further ordered, that any person, partnership, association, or corporation claiming to have an interest in the subject matter involved may, at any time before the closing of the hearing, file a petition for leave to intervene at said hearing;

And it is further ordered, that the said Long Beach Federal Savings and Loan Association, any member or creditor thereof, the Federal Home Loan Bank Administration, and any party whose petition for intervention has been allowed, shall have the right, by counsel or otherwise, to appear and be heard at the hearing, to produce, examine, and cross-examine witnesses, to introduce documentary or other evidence, and to file briefs and reply briefs;

And it is further ordered, that the said Hearing Officer shall have complete charge of said hearing; may receive, admit, allow, exclude and deny petitions and evidence, including the hearing of testimony according to the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States, provided, however, that such rules may be relaxed by the said Hearing Officer in order to promote the just determination of the ultimate issue; may limit the time within which briefs and reply briefs may be filed and may require the furnishing of copies thereof to other parties; shall order the preparation of a record, including a transcript of the testimony and evidence presented; may make rulings and note exceptions, but
198 shall not have power to decide any motion to dismiss the proceedings or other motion that involves final determination of the ultimate issue; may hear arguments; may adjourn the said hearing from time to

time, if, in his judgment, it is desirable to the orderly conduct, of the said hearing or to promote the just determination of the ultimate issue; and may do all such things and have all such powers as are necessary or proper to the orderly conduct of said hearing or to promote the just determination of the ultimate issue, but shall not have power to finally determine the ultimate issue;

And it is further ordered, that after the close of the hearing the said Hearing Officer shall transmit as promptly as possible to the Secretary to the Federal Home Loan Bank Administration the complete transcript of testimony taken, together with any exhibits, briefs, or other material incorporated in the record of said hearing;

And it is further ordered, that the Secretary or an Assistant Secretary shall advise all parties appearing at said hearing in person or by attorney, by registered mail, return receipt requested, promptly upon receipt of said transcript, of the filing thereof, and shall make such transcript available for inspection by any such party and supply a copy thereof, upon request, to any such party at a price which will cover the reasonable cost of its preparation, as determined by the Secretary.

And it is further ordered, that notice of the hearing herein provided for shall be served by the Secretary to the Federal Home Loan Bank Administration by mailing a copy of this order by registered mail to Long Beach Federal Savings and Loan Association, c/o its President, T. A. Gregory, 350 E. Fourth Street, Long Beach 2, California.

* * * * *

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on June 5, 1946.

[SEAL] J. FRANCIS MOORE,
Secretary.

200 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order continuing to July 1, 1946, for the purpose of setting hearing date on motion for preliminary injunction and continuing temporary restraining order

Filed June 18, 1946

Upon the oral Stipulation of Counsel for Plaintiffs and Counsel for Defendants, A. V. Ammann, individually, and A. V. Ammann, as Conservator for the Long Beach Federal Savings and Loan Association, and from the verified Complaint, Affidavits and Records on file herein.

It appearing that there is reason to believe that the defendants or some of them may dissipate and break up the Long Beach Federal Savings and Loan Association, its membership shares, and organization by merging, consolidating, reorganizing or uniting said association or commingling said association's assets, membership shares, or members with other organizations, banks, corporations, associations or institutions, and that there would thereby be caused immediate and irreparable injury, loss and damage to the Plaintiffs and other shareholder members of the said association, and for said cause shown, it is hereby ordered that the Plaintiffs' Motion for Preliminary Injunction and defendant's Motion to Dismiss, and other motions now noticed for Monday, June
201 24, 1946, be continued for setting only to Monday, July 1, 1946, at 10:00 o'clock A.M., in the Federal Building at Los Angeles, California.

All parties, who have appeared, shall have to and including Friday, June 28, 1946, to file Statements and Points and Authorities in opposition to the respective Motions of the Defendant, A. V. Ammann, to Dismiss and of the Plaintiffs for Preliminary Injunction and of the Defendant, Long Beach Federal Savings and Loan Association, for hearing of Motion for Preliminary Injunction on oral testimony.

It is further ordered that all documents shall be filed in quadruplicate for consideration by a Court composed of Three (3) Judges.

It is further hereby ordered that upon the findings above made and for the reasons above set forth that the Temporary Restraining Order heretofore made on the 27th day of May, 1946, be and it is hereby continued in full force and effect, until the hearing of, and the final determination of the said Motion for Preliminary Injunction or until further order of the Court.

Dated: At Los Angeles, this 18th day of June, 1946.

Peirson M. Hall,
PEIRSON M. HALL,
Judge of the District Court
of the United States.

Approved as to form this 18th day of June, 1946.

CHARLES H. CARR,
U. S. Attorney.
By Ronald Walker,
RONALD L. WALKER,
Asst. U. S. Attorney,
Attorneys for Defendant, A. V. Ammann.
WESTOVER & SMITH,
By WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

206 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Notice of motion for preliminary injunction to restrain the holding of an administrative hearing
Filed June 20, 1946

To: A. V. Ammann, individually, and A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, defendants herein; and James Carter, United States Attorney, Ronald Walker, Assistant United States Attorney; and Mildred Kluckhohn, Assistant United States Attorney, their attorneys; and John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as Commissioner and Administrator to the Federal Home Loan Bank Administration, defendants

herein; and Title Service Company, defendant
207 and Cross Claimant in Interpleader; and Harry O. Wallace, their Attorney; and Robert O. Wallis, defendant and Cross Claimant in Interpleader; and Raymond Tremaine, his attorney; and Long Beach Federal Savings and Loan Association, defendants herein; and to Charles K. Chapman, its attorney:

You and each of you will please take notice that on Monday, July 1, 1946, at the hour of 10:00 o'clock A. M., in the Court Room of the Honorable Peirson M. Hall, Judge of the United States District Court in the Federal Building, in the City of Los Angeles, County of Los Angeles, State of California, the plaintiffs herein, individually, and as Representatives of a class suing for and on behalf of all of the Shareholders of the Long Beach Federal Savings and Loan Association, will present to this Honorable Court a Motion for Preliminary Injunction to Restrain the Holding of an Administrative Hearing.

This Motion will be based upon the Motion for Preliminary Injunction to Restrain the Holding of an Administrative Hearing, Plaintiffs' Summary Statement of Pertinent Facts In re: Preliminary Injunction to Restrain the Holding of an Administrative Hearing. Affidavits, photostatic copy of the record of Testimony given by the Defendants and others, before the Congressional Committee Investigating the Acts of Executive Agencies, which Exceed their Authority, and Plaintiffs' Points and Authorities, all of which Documents are attached hereto, and served and filed herewith; and

Further said Motion will be based upon the Verified Complaint, Affidavits, Pleadings, Papers and Documents on file in this action, and upon Oral Testimony of Witnesses and Documents, Records and Files to be presented and introduced at said hearing on this Motion for Preliminary Injunction to Restrain the Holding of said Administrative Hearing.

208 On July 1, 1946, at said time and place, the Plaintiffs will make a further Motion that this Honorable Court set a time and place for the Hearing of the said Motion for Preliminary Injunction to Restrain the Holding of said Administrative Hearing, at which time

and place, the many witnesses, residents of Southern California, may appear and testify in person and that said Hearing of this Motion for said Preliminary Injunction be by a Court of Three Judges, pursuant to the Provisions of Section 380 (a) of Title 28 of the Judicial Code, as said Motion for Preliminary Injunction to Restrain the Holding of said Administrative Hearing is based upon the grounds that certain Acts of Congress, Rules and Regulations thereunder, or parts thereof, are repugnant to the Constitution of the United States.

Dated: At Los Angeles, this 20th day of June, 1946.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

209 In the District Court of the United States

[Title omitted.]

Motion for preliminary injunction to restrain the holding of administrative hearing

Come now, the Plaintiffs, and complaining of the Defendants, John H. Fahey, individually, John H. Fahey, as Chairman of the Home Loan Bank Board, A. V. Ammann, individually, and A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, and any and all of the agents, employees, servants, subordinates, and hearing officers purporting or attempting to hold any purported hearing or hearings under authority of, or as representative of said John H. Fahey, or the Federal Home Loan Bank Board or Administration, and for grounds of Motion to be made for this Preliminary Injunction, state that:

That unless restrained from so doing, the defendant, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as Administrator of the Federal Home Loan Bank Administration and the defendant, A. V. Ammann, his purported Conservator for the Long
210 Beach Federal Savings and Loan Association, by and through their representatives, agents, subordinates and un-named hearing officers propose to hold a purported administrative hearing, commencing on July 3, 1946, pursuant to their Order No. 5309, of the Federal

Home Loan Bank Administration to take testimony for submission to the Federal Home Loan Bank Administration and to John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as Administrator of the Federal Home Loan Bank Administration for determination by himself, as to whether or not he, himself, acted properly and within his authority and jurisdiction in having appointed his co-defendant, A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association and in having authorized the seizure, without prior notice and/or hearing, of the said Long Beach Federal Savings and Loan Association and its $26,000,000.00 of assets.

That the provisions of the Federal Acts, under which the above named defendant and the Federal Home Loan Bank Administration purport to act, and the rules, regulations and directions purportedly made and adopted pursuant to and under each and all such Federal Acts, are unconstitutional and repugnant to the Constitution of the United States and Amendments IV and V thereof, and the attempt to delegate legislative and judicial authority to the Federal Home Loan Bank Administration and its Administrator and Commissioner, the defendant, John H. Fahey, was ineffectual, incomplete and/or an improper and unconstitutional attempt to delegate such judicial and legislative authority.

That the said proposed administrative hearing would not be conducted in a fair and impartial forum for the hearing of the matters in controversy, because the defendant, John H. Fahey, as Federal Home Loan Bank Administrator, in passing upon, adjudicating and determining the propriety and validity of his own act and the acts of his subordinates in the Federal Home Loan Bank Administration, performed and done pursuant to his own direction and authority, would not be a fair and impartial adjudicator, but they have demonstrated by their actions and their statements, that they will be influenced in such adjudication by bias and prejudice, and they have already decided and determined the issues upon which they propose to hold said administrative hearing.

That the questions proposed to be heard and determined by such Federal Home Loan Bank Administration at the said purported hearing, to wit: the question "as to why

the Conservator should not have been appointed, and why an order should be entered by the Federal Home Loan Bank Administration discharging the Conservator" are questions involving the constitutionality of the rules, regulations and acts or parts thereof, under which said Conservator was allegedly appointed and which same questions are here raised in this litigation now pending before this Honorable Court composed of three judges, under these proceedings, had pursuant to the provisions of 380 (a) of Title 28 of the Judicial Code.

That these parties, plaintiffs, are not parties to said purported administrative hearing, and that there are various other parties to this present pending litigation, to-wit: interpleading parties, who are not parties to said purported administrative hearing, yet whose rights and interests might be seriously affected by any attempted or purported decision or determination which might be so allegedly made by the defendant, John H. Fahey, as Federal Home Loan Bank Commissioner, Administrator, or Chairman of the Board, or which might be made or attempted to be made by any part of said Federal Home Loan Bank Administration, its agents, employees, servants, subordinates and/or hearing officers.

That the holding of said purported administrative hearing, the constitutionality of which is placed in question by this pending action, would constitute a multiplicity of actions, be an encroachment and infringement upon the jurisdiction and authority of this Honorable Court to hear and determine the questions, including constitutional
212 questions raised by this pending action and would cause immediate and irreparable damage and injury to these plaintiffs and to the interest of the other approximately 16,000 shareholder members in the said Long Beach Federal Savings and Loan Association and would injure and damage the good-will and going concern value of said Association and its shareholder members, and the result of publicity might restart a "run" of withdrawals from said Association, which might even exceed the "run" or withdrawals caused by the seizure of said Association by said defendant, A. V. Ammann, as purported Conservator, which said "run," within a comparative short time, caused withdrawals in excess of $6,000,000.00.

Whereupon now come the plaintiffs, in the above entitled action and make their Motion as follows, to wit:

Motion for preliminary injunction

That this Honorable Court issue a Preliminary Injunction, restraining and enjoining the defendants, John H. Fahey, individually, and as Chairman of the Home Loan Bank Board, and/or A. V. Ammann, individually and as purported Conservator for the Long Beach Federal Savings and Loan Association, and/or any and all of their agents, employees, servants, representatives, hearing officers, and/or subordinates, and each and all of them from, directly or indirectly, during the pendency of the above entitled action, and until the final determination of the said action, or until further order of this Honorable Court, proceeding with, holding, or attempting to hold any hearing or hearings, pursuant to Order No. 5309 of the Federal Home Loan Bank Administration or at all, or from hearing or determining any other questions, issues or matters, which are now or may hereafter be pending before this Honorable Court in the above entitled action, without the further written order of this Court being first had and obtained.

213 The above Motion is made and based upon the Notice of Motion for Preliminary Injunction to restrain the holding of an administrative hearing heretofore served and filed and upon the verified complaint herein, affidavits, records, pleadings and papers on file in this action and upon the Oral Testimony of witnesses, documents, records and files, which may be presented and introduced at said hearing on this Motion for Preliminary Injunction to restrain the holding of an administrative hearing.

In support thereof, there is attached hereto, Plaintiffs' Summary Statement of Pertinent Facts re: Preliminary Injunction to restrain the holding of administrative hearing, together with supporting affidavits and documents, and Plaintiffs' Points and Authorities.

Dated at Los Angeles, this 20th day of June 1946.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

214 JOHN J. FAHEY:

Mr. FISCHBACH. Just for the moment using the Long Beach Federal Savings & Loan Association as an example, the Federal Savings & Loan Association of Long Beach could have withdrawn from membership in the Federal Bank of Los Angeles, and at the same time it too could have gone out of business?

Mr. FAHEY. Oh, it wouldn't have to go out of business.

Mr. FISCHBACH. It would have to go out of business as a Federal?

Mr. FAHEY. It would have to go out of business as a Federal, certainly. It could change to a guaranteed stock State chartered institution if it wanted to, provided the State of California would give them a charter.

Mr. FISCHBACH. Provided they could get a State charter?

Mr. FAHEY. Yes. I doubt if Mr. Gregory would get one.

Mr. FISCHBACH. Mr. Chairman, would that remark be stricken from the record? It was neither called for by any question——

The CHAIRMAN. Read back the last few words, please.

(The record was read by the reporter.)

Mr. HARTLEY. I move that that be stricken from the record.

Mr. FAHEY. All right, it is perfectly agreeable to me.

Mr. JENNINGS. Well, it wouldn't depend, Mr. Fahey, on whether it was agreeable to you or not if the

215 committee decided * * * members.

Gregory was a director of the Federal Home Loan Bank of Los Angeles and is a member of the board of the California Savings and Loan League.

As stated, he has been one of the largest borrowers from the Federal Home Loan Bank of Los Angeles, having secured over eight million dollars in advances from the institution—a large part of it after the late President Hurford became incapacitated by illness, and Berry was in Charge.

He and his father secured from the United States Treasury and the Home Owners' Loan Corporation, share purchases totaling $875,000, which was invested in these two associations on the recommendation of the Los Angeles Bank board.

This substantial contribution of public funds was made available in the expectation that it would be used to develop institutions which would render a public service to home owners, and safeguard the interest of those who placed savings in their custody.

This money would never have been advanced to these associations; they would have never secured Federal charters, and we would not be here today if the Federal Home Loan Bank board had been informed of the unscrupulous practices of the Gregory's in connection with the affairs of the Reliable Savings and Loan Association of Long Beach, which had to be taken over by the State of California just before they obtained the
216 Federal charters to which I have referred.

It was the business of the officers and directors of the Los Angeles Bank to have advised us of the facts in this case They failed to do so.

On May 21st we were obliged to appoint a conservator for the Long Beach Federal Savings and Loan Association to protect the savings of over 16,000 people, as a result of conditions discovered by our examiners when they began their regular annual examination of the association's books a week before.

I shall refer later to some of the significant facts, and Colonel Lee, governor of the Federal Home Loan Bank System will report to you more details, if desired.

Suit has been entered in the Federal Court in an effort to regain control of this institution. Gregory has set up the false and hypocritical cry that I acted in this matter in reprisal against him because of his effort to force the election of Berry as president of the Federal Home Loan Bank, the Los Angeles Bank. It is assumed that the courts will presently determine the justification for our action.

Later in this statement, I will review further the Gregory record supported by interesting documents, but before doing so I would like to mention his chief associates in the attempt to make Mr. Berry president.

I have spoken of two former employees of the Federal . . . .

217 Fitzpatrick was one of the most conspicuous offenders. It was repeatedly alleged that he was securing clients among bank members because of the

whisper that he was most intimate with Berry, and had the "inside" on the affairs of the bank.

The facts proving that he had worked himself into a position where he could exercise unusual influence with most substantial profit, we shall later present to you in detail.

With all of them, directly or indirectly, Berry worked to secure the presidency of the bank for himself, incurring obligations in addition to many already accumulated which make it impossible for him to serve effectively as president of the Federal Home Loan Bank of Los Angeles.

In the meantime, he positively denied that he was active in this campaign while at the same time he was spending the bank's money to advance his personal interests and secure increased salary.

These are introducfory sketches referring to the men who by their willful self-seeking acts have caused greater dissension and disturbance among the members of one of these banks than has occurred at any time since the organization of the bank system.

May I later be permitted to add details supporting my statements concerning these men which are essential to an understanding of the claims they have presented to this committee.

* * * * *

218 good these charges, telephone charges, on his own account, until the matter was specifically brought to his attention, and so far as our records go and any knowledge we have, they have not yet been made good, although the total runs nearly to a hundred dollars.

It is, of course, impossible to tell at all times whether or not calls were made on the business of the bank or in furtherance of Mr. Berry's candidacy.

The average tolls per month, however, during the ten months' period prior to Mr. Hurford's death were 25 from day to day, and during the five months subsequent to his death they went up to 55.2. Undoubtedly some of these in both cases were for perfectly legitimate business of the bank, but we are aware of no activity which would account for so large a rise during that period.

On April 14th, 1945, Mr. Gregory informed Colonel Lee

that consideration was being given to organizing a state insurance fund in California and that unless I would agree to the election of Mr. Berry as the president of the bank there would likely be many conversions from Federal to state associations.

In addition to that, on April 10, 1945, Mr. Gregory told Colonel Lee and Mr. Twohy that I did not have the right to disapprove the officers elected by the board and suggested a compromise whereby the duties of the
219 bank president and of supervision would be separated and placed in different persons and the bank be given a free hand in selecting its president and stating that unless such a compromise as he had suggested could be worked out, the Federal Home Loan Bank Act requiring the approval of the Commissioner would be changed or they would have a new Commissioner.

Now, on April 13, 1945, Mr. Gregory called on me in the Washington office. He told me that if an agreement could not be reached whereby the directors could name the president of the bank without interference by the Commissioner and the Commissioner name the official who would be responsible for supervision without interference by the directors, that certain members of the Los Angeles Bank would attempt to secure amendments to the Federal Home Loan Bank Act which would eliminate the provisions that the Commissioner must approve the election of the president and officers of the Federal Home Loan Banks.

I then advised Mr. Gregory that I would not enter into any trade with reference to the presidency of the Los Angeles Bank in order to secure immunity from personal attack, or for any other reasons.

At different times such threats have been made by Gregory and members of the Committee. I have always met these threats by the assertion that I would welcome the.

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220 Testimony of KENNETH G. HEISLER:

Mr. FISCHBACH. Mr. Heisler, have you ever requested an opinion from the Attorney General of the United States as to what the authority of the administration

under that language of the Act is or whether your own interpretation of it is sound?

Mr. HEISLER. There has not been one requested while I have been there.

Mr. FISCHBACH. Didn't you think the matter of sufficient gravity to seek such an opinion?

Mr. HEISLER. I do not.

Mr. FISCHBACH. Do you think it is quite proper for the administration to proceed with the appointment of a conservator for a solvent institution under this Act?

Mr. HEISLER. If we do not have the power to appoint a conservator in instances of this nature, we are helpless.

Mr. JENNINGS. Right there, that strikes me as peculiar. You say you haven't the power to appoint a conservator in instances of this nature. You mean by that, if you mean anything, in the light of this record, that if in an instance where the head of this institution here in Washington conceives a dislike to the officers of a solvent going concern, that is serving the public, and it hasn't violated the law in any particular, that in order to get him, start to have a run on his bank, you would have to do it as you did in this instance; you wouldn't dare

221 to go into any court of the land with charges like you have enumerated here in this blanket, vague, Mother Hubbard charge, you have lodged here against this institution. Why you couldn't get a receivership for a peanut stand in any court of the land on charges like that.

Mr. HEISLER. In the first——

Mr. JENNINGS. I am surprised that you, as a lawyer, would undertake to justify what has been done in this instance on vague, general statements here, that don't put this bank or its officers on notice with respect to anything.

Mr. HEISLER. Let me answer you fully, if I may.

In the first place, I do not know that the head of our institution had anything to do with this. I don't believe there can be any charge possible of malice. He didn't know the facts; he wasn't here at the time.

Secondly, the facts have not been reviewed or placed before you.

Thirdly, I have reviewed them, gone over them, and am

fully convinced, as a lawyer, that they are not only sufficient to constitute action by the Federal Home Loan Bank Administration, but demanded action under the circumstances and the facts which will be here developed.

Mr. JENNINGS. Now, here is this paper. I want to read it to you for the benefit of the record.

Mr. HEISLER. That is a technical order, you understand.

Mr. JENNINGS. Yes, I know it is a technical order; it is

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222 Testimony of HAROLD LEE:

The CHAIRMAN. You refer—let's see it—to exhibit 6 which was the report of April 23rd that you sent up?

Mr. LEE. Exhibit 6, yes, sir.

We were further under notice that on Monday morning there would be an additional thousand—one hundred thousand dollars taken out, which might get beyond the reach of the institution, and these men. The evidence with respect to the financial responsibility of these men is such, their investments in the corporation is such, and so forth, that we might have difficulty recovering it.

It was our opinion, for the association, that this item of $16,000 which has been paid out, and the item of one hundred thousand dollars, if paid out in the manner in which it was appropriated or having been appropriated, an attempt having been made by the directors to have it appropriated and have it disbursed in some attempt, would not come under the bond.

Bonds do not cover the acts of the directors unless these directors are not acting as directors but only officials and employees of the corporation. We, therefore, had no recovery against the bond.

There was also a movement in California, which was reported to me by Mr. Keller, assistant governor who testified here yesterday or the day before in the case here, that at a meeting shortly after the bank was consolidated, the question of assessment of associations who were members of the Federal Home Loan

223 Bank was discussed, and it was suggested that the associations contribute—I say assessment, I mean a request that they make contribution or payment on the basis of $100 per million dollars of assets.

Mr. JENNINGS. Payment for what purpose?

Mr. LEE. For the purpose of bringing legal action.

Mr. JENNINGS. Protecting themselves against you gentlemen here in Washington who would——

Mr. LEE. That would be a matter of opinion.

Mr. JENNINGS. Who were han-ing on their flanks?

Mr. LEE. You haven't heard the other side of the case yet, Congressman, and when this is finally determined in court, I am sure, quite confident, that it will be determined favorably to the Federal Home Loan Bank Administration, and I think if you don't withhold opinion, you will be embarrassed, because we have the facts.

Mr. JENNINGS. I am not going to be embarrassed.

Mr. LEE. I don't think Mr. Gregory can ever get it back from that institution.

Mr. JENNINGS. You have destroyed it.

Mr. LEE. That isn't his institution. The money that was taken out of their belonged to the people who withdrew it, and they had a right to take it out, and furthermore, he was only getting two and a half per cent on his bonds, and he was getting two per cent on his dividends, and the
224 institution is not hurt nor impaired, and it is just as good, in as good position today as it was when they went in, and they are making investments; they are not afraid of us; they are afraid that this group may get back into possession of that institution, and I am afraid that they will get back and hurt it.

Mr. FISCHBACH. Mr. Lee, you refer to action of the board of directors in establishing a fund, and you described the purpose of that fund as one which had some other objective, to bring action to restrain the Federal Home Loan Bank Administration from exercising its supervisory control.

Mr. LEE. That is correct.

Mr. FISCHBACH. Now, to begin with, you have seen, have you not, an exact copy of the resolution of the board of directors pursuant to which that fund was established?

Mr. LEE. I have.

Mr. FISCHBACH. Now, I will read you the resolving paragraphs.

"Whereas, there have been indications that retaliation against this association by those purporting to be repre-

senting the Federal supervising authorities, because the representative of this association duly elected as a director of the Federal Home Loan Bank of Los Angeles"—that is Mr. Gregory—"did not disregard the legal rights and best interests of said bank and submit to the dictation
225 of the Federal Home Loan Bank Commissioner, and

"Whereas, such retaliations are unwarranted and violate the principles of our democratic government and are detrimental to the best interests of this association,

"Now, therefore, be it resolved—be it hereby resolved, that the officers of this association be and they are hereby authorized to employ legal counsel to conduct appropriate legal proceedings"—and I call your particular attention to this, Mr. Lee—" to restrain said Federal Home Loan Bank Commissioner or his deputies from interfering with the normal and proper conduct of this association's affairs.

"The sum of $100,000 is hereby appropriated and authorized to be expended for that purpose."

Now, having refreshed your recollection in connection with the exact verbiage of that resolution, I ask you, Mr. Lee, whether there is anything immoral or improper in a board of directors of any association which is charged with the management of the affairs of that association, from taking action, or authorizing action to be taken to restrain the Federal Home Loan Bank Commissioner or his deputies from interfering with the normal and proper conduct of that association's affairs?

Mr. LEE. Answering that question specifically, as asked, no; nothing improper. But I want to explain, and I am entitled to explain, that there is something improper in
226 appropriating an unreasonable and exorbitant amount, and particularly when the man who makes the appropriation, was not a heavy investor in the association.

The last date that I have as to the amount of his investment prior to that report on 12,31/45, his stake in that was $1821, and it was insured against loss by the Federal Home Loan Bank Administration.

Now, they did not——

Mr. FISCHBACH. Let's take your explanation.

The CHAIRMAN. Let him finish.

Mr. LEE. They did not give out copies of their by-laws

and charter to the people. The people in that institution, I am informed, and Mr. Ammann here can testify as to that, I think, didn't know generally that they had any voice in this thing, and that they were entitled to come to these meetings, and it was certainly, in my opinion, then and now, highly improper for these directors to appropriate such an exorbitant amount.

No question would have been raised had it been a reasonable amount.

Mr. FISCHBACH. Just a moment, Mr. Lee.

Mr. LEE. And there is, on top of that the $16,000 that he spent in there, for what?

Mr. FISCHBACH. By what authority——

Mr. LEE. Let me get through here. This association had no business down there at all, and this president came down here and stayed three months, and he got on
227 September 13, $1,000; there was no proper account entered in the books on these things.

On October 22nd, they wired him another thousand, this is 1945. On November 5th, they wired him another thousand dollars. This is in Washington.

November 24th, the man T. A. Gregory got another thousand dollars. He was living well. December 1st, they wired him $2,000; January, 1946 they gave him $2,000; January 31, they wired him $1500; February 20, they wired him $2,000; February 28th, they wired him $2,000; March 27th, they wired him $1,000; $14,500 expended for something in Washington that his association had no business in Washington for. It wasn't justified in the books and it can't be justified.

Mr. FISCHBACH. Just a moment, Mr. Lee, is that for you to determine or for the directors of the association to determine?

Mr. LEE. That was for me to determine as supervising officer, whether that was an improper thing or not, and whether it required supervision under Section 5 (a) of the HOLC Act. Under that, we are charged with examination, supervision and regulation.

Mr. FISCHBACH. You don't know even in this instant what Mr. Gregory was doing here in Washington at that time, do you?

Mr. LEE. Oh, yes, I have a pretty good idea, but
228 not in the form of legal proof, yes.

Mr. FISCHBACH. All right, so you have no——

Mr. LEE. He was spending a lot of money of that association improperly.

Mr. FISCHBACH. So you have no idea as to what Mr. Gregory's mission was in Washington, what he was doing?

Mr. LEE. Yes, I have some idea. He told me what his mission was on several occasions, he and Weinblatt were around to see me, and, incidentally, he told you that he was with TransAmeric Corporation. He is not with them at all; he is not associated with them. He was up here as a fixer and a briber.

Mr. FISCHBACH. Did he try to bribe you?

Mr. LEE. I don't think Mr. Gregory can account for the expenditure of that money, and I think he ought to be required to account for it before this committee, and if he doesn't account for it here he will have to account for it in court.

Mr. JENNINGS. You made a statement that these men were up here, up here as bribers and fixers. Who were they bribing?

Mr. LEE. Well, how did he spend $14,000 in two or three months?

Mr. JENNINGS. I don't know. I am asking you. You made the statement. Who was committing bribery here?

Mr. LEE. Well, Congressman, you don't spend that amount of money in two months.

Mr. JENNINGS. I didn't ask you that question.
229 You are under oath, and you just made a statement as a witness who has been sworn to tell the truth.

Now, tell this committee which of these two men were bribing somebody in Washington and who did they bribe?

Mr. LEE. Well, Weinblatt—they didn't bribe anybody I know of.

Mr. JENNINGS. How is that?

Mr. LEE. If I knew it definitely I would get a warrant out.

Mr. JENNINGS. Well, you made that statement. Are you that reckless as a witness under oath that you would come before this committee and make the statement that one of these two men or both of them to whom you have referred

were over hear bribing somebody and now you admit that you have no evidence of the truth of what you have said.

Mr. LEE. I didn't say I had no evidence.

Mr. JENNINGS. What is it? Just tell this committee now which of these men bribed somebody and who did they bribe?

Mr. LEE. Well, there was a letter offered in evidence by Mr. Fahey yesterday as one of the exhibits wherein this letter, written by Mr. Berry——

Mr. JENNINGS. That is not an answer to my question. You have made a statement that they were here committing bribery. Which one of them committed bribery and whom did they bribe?

Mr. LEE. They didn't bribe me.

230 Mr. JENNINGS. Whom did they bribe? You have made that statement.

Mr. LEE. They didn't bribe Mr. Fahey.

Mr. JENNINGS. Do you want to take it back and admit that you stated a falsehood or are you going to tell us who that was?

Mr. LEE. I said I thought that the money was improperly used, and probably for that purpose, and I won't take it back. I won't be intimidated by that statement.

Mr. JENNINGS. I want to get the facts from you if you know facts. We want the facts, and if you don't know the facts, we don't want you to come here and perjure yourself.

Mr. LEE. Well, you are making it very difficult for me to get the facts.

Mr. JENNINGS. So, you do now charge these men with bribery, either of them?

Mr. LEE. Mr. Congressman, I think before we are through we will be able to show that those funds were improperly used and unless somebody perjures themselves, they will be embarrassed.

Mr. JENNINGS. Just tell me which of those men committed perjury, tell this committee?

Mr. LEE. Well, of course, Weinblatt is one whose character is not——

Mr. JENNINGS. I am not asking about his character; I don't know but what it is as good as yours. I am

231 not caring anything about that.

Which one did you say that it was committed

bribery in Washington, Weinblatt, or Gregory?

Mr. LEE. I said I thought he was here in Washington and did it.

The CHAIRMAN. You said something else.

Mr. LEE. I still think we will be able probably to prove that before we are through, not in this hearing.

Mr. JENNINGS. That is something else. You can prove anything you want to.

The CHAIRMAN. Let me inquire here, you mean that you expect to prove it before this committee?

Mr. LEE. No, sir, we do not have that.

The CHAIRMAN. You said before you were through. This is a very serious charge.

Mr. LEE. There are legal cases pending, and I think before this case is over, Mr. Gregory will have to account as to what became of that money, and we will have an opportunity to check that and see whether that is true or not, and I think before we are through we will have pretty good information, and I don't care to make any—it would be very unfair and quite improper to criticize me for putting in my thoughts and impressions. I certainly wouldn't do anything of that kind. I have my own opinions and suspicions, and I can't prove them, but I am still working on it, and I expect to be able to
232 work it out yet.

Mr. HARTLEY. Of course, Mr. Lee, that is an entirely different statement from what you made previously.

Mr. LEE. That is my statement

The CHAIRMAN. Let's get along.

Mr. LEE. It is the public officials who are being pushed around here and are being put on the defensive, and not the people who are running their institutions improperly; officials who are trying to perform and doing their duty. We shouldn't be on the defensive.

Mr. HARTLEY. Who is pushing you around?

Mr. LEE. Well, I think we are being pushed around.

Mr. HARTLEY. By whom?

Mr. LEE. By Mr. Jennings there, for one thing. He has already pre-judged the case, already decided the case, he says. I see very little use, if he has already pre-judged and predetermined it.

Mr. JENNINGS. I am somewhat of a judge of people.

and I make up my mind whether a statement of fact is presented to me, and that is why I am here. I need no apologies from you or anybody else.

Mr. LEE. If you have decided that Mr. Ammann, who is a public official and has a good record with the Government, and Mr. Heisler and myself are disreputable and dishonest, why there isn't any use of our offering any evidence.

233 Mr. JENNINGS. I do think that there has been some arbitrary action here.

Mr. LEE. You haven't heard our evidence yet. You don't know why. Why should you think that at all. Why should you not withhold your decision?

The CHAIRMAN. Let's get along.

Mr. FISCHBACH. Now, as a matter of fact, Mr. Lee, wasn't the money which you referred to as having been expended in Washington by Mr. Gregory, paid back over the protest of the board of directors of that institution?

Mr. LEE. No, sir, it wasn't paid back. There was an effort to straighten out the record of what I call a fictitious and unlawful interest.

Mr. FISCHBACH. I didn't ask you to characterize it, Mr. Lee. Now, you are a lawyer and a businessman.

Mr. LEE. That is my answer to your question, and I will let it remain as such.

Mr. FISCHBACH. Yes.

Mr. LEE. What they did, and they way that they paid it back or attempted to pay it back, and it was not a repayment, was to increase, attempt to increase—because I don't think they accomplished it—Mr. Gregory's salary retroactively, commencing January 1, 1945, I believe, and this was purported to have been done in April, but he continued to draw his—I mean, January, '46—but

234 he continued, I believe, to draw his pay at the rate of $8250 until April.

I do not believe that the board of directors can legally increase his pay retroactively for 1945. I think, therefore, that is a void transaction. It is a gratuity, and there is no consideration for it, and I consider there has been no repayment.

Furthermore, they increased then his salary from $8250 to $20,000, and, of course, they had a right to increase his salary if he was therein conducting the business of

his association. He was down here in Washington for two or three months. I don't think that was on the business of his association.

Mr. FISCHBACH. Please, Mr. Lee, I would like to call your attention to the fact that this committee is functioning pursuant to a resolution of the House, that its purpose is to get facts, not your thoughts nor your opinions. We would like to get the facts.

Mr. LEE. You never called upon us for any facts before you entered into this hearing or asked for our evidence or asked to examine it.

Mr. HARTLEY. We are not supposed to get the facts before the hearing starts; that is the purpose of the hearing.

Mr. LEE. I mean your counsel. He hasn't asked us for it. He hasn't asked us for the order of witnesses or how the evidence was presented. We have had
235 no opportunity to present committee.

Mr. LEE. One account in his own name and another account in his name and that of his daughter, and another account in his name and that of his wife, and—well, those are mere subterfuges. What they were trying to do here was take this institution and do with it as they saw fit. It was a very alarming thing when I saw it. Now, maybe I was wrong. I did not act on that because I felt that they had not accomplished it. I am not relying on it as one of the grounds for the appointment of a conservator.

Mr. FISCHBACH. Is it stated in the bill of particulars?

Mr. LEE. I am willing to concede that I appointed a conservator upon the attempt to withdraw $100,000, as I stated.

The CHAIRMAN. As I understand you, Mr. Lee, is this $100,000 an incident upon which you base your action?

Mr. LEE. Yes, and all these other things coupled with it, the general atmosphere and why we were alarmed; particularly the $16,000 withdrawal which had come before.

May I add one more thing, Mr. Congressman, about that?

The CHAIRMAN. Yes.

Mr. LEE. That with this attempt to have all these associations—I got Congressman Jennings cleared up on

that before. I don't want to start it again. But to contribute these large amounts of money, if we had permitted this institution to do that, all these institutions
236 would have made exorbitant contributions for this sort of thing, and it would have made our supervision ridiculous and supervision would have fallen down in California.

Now, I do want to make clear that we never have questioned and never would question the withdrawal of a fair and reasonable amount, to challenge the authority of the Federal Home Loan Bank Administration. It has been done time and again and can always be done, but to spend hundreds of thousands of dollars out of these mutual institutions out there in this thing, we thought, is going too far.

Mr. FISCHBACH. Mr. Lee, by what authority of law do you undertake to substitute your own judgment for that of the board of directors of the institution?

Mr. LEE. Section 5 (a) of the Federal Home Loan Bank Act, which gives us the power and charges us with the duty to examine, supervise, and regulate Federal savings and loan associations. It is the duty.

Mr. FISCHBACH. Isn't it a fact that it was a contemplation of Congress that there be autonomy in the management of all these Federal savings and loan associations?

Mr. LEE. If there was to be complete autonomy, they would never have adopted that act. No, sir, it is not.

Mr. FISCHBACH. Did the Federal Home Loan Administration not seek to have the act amended, or seek at the time of the passage of the original act to have authority to control these

* * * * *

237 In the District Court of the United States

[Title omitted.]

Affidavit of T. A. Gregory

STATE OF CALIFORNIA,
County of Los Angeles, ss:

T. A. Gregory, being first duly sworn, deposes and says: That he is the President of the Long Beach Federal Savings and Loan Association, which position he has held

over since its inception in 1934; that he was personally present in the offices of the Long Beach Federal Savings and Loan Association, at 328 American Avenue, in the City of Long Beach, County of Los Angeles, State of California, on May 20, 1946, and at that time the defendant A. V. Ammann stated to your affiant that the Long Beach Federal Savings and Loan Association was then and there seized and taken over.

That your affiant requested to know by what authority said seizure was made, and asked for evidence of any
238 Court order or other authorization or process for, or Order authorizing said seizure.

That A. V. Ammann orally stated to your affiant that an Order had been issued in Washington, D. C., appointing him Conservator of the Long Beach Federal Savings and Loan Association and its assets, and that he did not need any Court Order or authorization whatsoever, or any other process or authority, that his sole word was the law and was sufficient.

That your affiant then requested written evidence or a copy of said Order, which Mr. A. V. Ammann refused to give to your affiant.

That after considerable argument a typewritten sheet of paper was produced by A. V. Ammann, which piece of paper bore no signature, seal, nor authentication of any sort.

That your affiant then requested some written proof of Mr. Ammann's statements and Mr. Ammann then stated, "I am an Assistant Secretary of the Federal Home Loan Bank Administration," and proceeded to then sign the said purported Order authorizing his seizure and assumption of possession of the Long Beach Federal Savings and Loan Association and all of its assets, and delivered the so-signed typewritten document. That copy of said typewritten document, as delivered to your affiant by said A. V. Ammann, is attached hereto, marked Exhibit "A" and made a part hereof.

That thereupon said A. V. Ammann repeatedly threatened your affiant with criminal prosecution unless your affiant and every employee of said Association immediately delivered up and surrendered possession of all cash, securities, bonds, furniture, equipment, real estate and assets of said Association to said A. V. Ammann.

That your affiant requested receipts, acknowledgements or inventory or some evidence of what cash, bonds, securities and other negotiable assets and valuables which were thus being seized by said A. V. Ammann from the possession of your affiant and the officers and directors of the Long Beach Federal Savings and Loan Association.

That said A. V. Ammann at that time and
239 repeatedly on subsequent occasions, refused to give any receipt or acknowledgment, or to make any inventory of the cash, bonds, securities and other assets so being seized.

That your affiant requested that the auditors for said Association, Mr. Mather and Mr. L. D. White, of the firm of F. W. LaFrance, Certified Public Accountants, who were then both personally present, be permitted to make an itemized list of the bonds, cash, securities and property thus being seized from said Association, and the said A. V. Ammann refused and declined to permit anyone to make any such lists, receipts or detailed statements of the monies, securities, bonds and valuables thus being seized.

That the said A. V. Ammann took no inventory at said time, nor at all, so far as known to your affiant, and did not make any detailed list or statement of what assets, negotiable bonds and securities were at that time seized from said Association, but within a few minutes after the seizure the said A. V. Ammann and his subordinates opened the offices of said Association to the public and started disbursing the monies so seized.

That at the time of said seizure there was on hand in the offices of the Association, for which said A. V. Ammann refused to give any receipt or permit any account or inventory to be made, the following assets, negotiable by delivery:

Cash—approximately in excess of $30,000.00.

United States Government Bonds—in excess of $176,000.00, most of which were bearer bonds.

Negotiable instruments consisting of notes, trust deeds, contracts and other documents in excess of $4,000,000.00, some of which were transferable upon delivery, having been endorsed in blank in the due course of business.

240 That said Association at the time it was seized, was entirely solvent and had assets in excess of

$26,000,000.00, approximately $22,500,000.00 of which were shareholder accounts, and said Association had profits, undivided surplus and reserves in excess of $1,300,000.00.

That at the time of said seizure your affiant heard one Ben O. Reddick ask the said A. V. Ammann, "Why are you here?" and heard the said A. V. Ammann reply, "If it gets in the paper we are here, it will create a run and tear down the institution, that's why we are here." The said A. V. Ammann, upon being further questioned by the said Ben O. Reddick, repeated his statement.

That neither your affiant, T. A. Gregory, nor his father, J. E. Gregory, have ever at any time personally borrowed any money whatsoever from either the Federal Home Loan Bank of Los Angeles, nor from the Federal Home Loan Bank of Portland, nor from the (purportedly consolidated) Home Loan Bank of San Francisco.

That your affiant desires to and does deny the statements and imputations made in your affiant's presence when he, John H. Fahey, was testifying in his, John H. Fahey's, own defense, before the Select Committee of the House of Representatives of the United States, to investigate acts of Executive Agencies which exceed their authority, and there stated as his conclusion that your affiant had indulged in "unscupulous practices," which statement your affiant denies as being untrue and entirely unfounded.

Your affiant further calls to this Honorable Court's attention that at the said hearing before said Congressional Investigating Committee, the said John H. Fahey stated under oath, while testifying in his, Fahey's, own defense that, "Gregory has set up the false and hypocritical cry that I acted in this matter in reprisal against him because of his effort to force the election of Berry as president of the Federal Home Loan Bank, the Los Angeles Bank. It is assumed that the courts will presently determine the justification for our
241 action." (Page 242) Whereas, in truth and fact your affiant has not set up any such statement and in truth and fact has not to this date filed any answer in the proceedings brought by shareholder members of the Long Beach Federal Savings and Loan Association, No. 5421-P.H., before this Honorable Court, although the said seizure of the said Long Beach Federal Savings and Loan Association by the said A. V. Ammann, pursuant to the direction of John H. Fahey, was in truth

and fact a reprisal against your affiant, because of his efforts to prevent the said John H. Fahey dictating to the directors of said Los Angeles Federal Home Loan Bank who should be its president, and to prevent your affiant and the Long Beach Federal Savings and Loan Association bringing a legal action to recover from the said John H. Fahey, assets of the Association seized by him when he seized the Los Angeles Federal Home Loan Bank, and further to prevent your affiant from testifying before said Select Committee of the House of Representatives to investigate acts of Executive Agencies which exceed their authority.

Your affiant directs this Honorable Court's attention to the fact that, though served with due process, the said John H. Fahey, has consistently refused to and still does refuse to appear in action, or submit to the jurisdiction of this Honorable Court, and through his Agent, A. V. Ammann, has made a motion for the dismissal of this pending action and is endeavoring to prevent this Honorable Court from hearing this matter on its merits.

Your affiant wishes to deny the statements made by John H. Fahey, while testifying in his, Fahey's, own defense before the Select Committee of the House of Representatives, to investigate acts of Executive Committees which exceed their authority, in which said John H. Fahey, stated under oath that your affiant had made threats against him. Your affiant denies specifically that he ever at any time made any threats against John H. Fahey.

Your affiant wishes to and does deny the state-
242 ments and allegations made by Harold Lee, Governor of the Federal Home Loan Bank System when he was testifying in defense of John H. Fahey, before the Select Committee of the House of Representatives, to investigate acts of Executive Agencies which exceed their authority, accusing your affiant of being "a fixer and a briber," which said statement the said Harold Lee was unable to support in any way whatsoever and finally retracted, to wit:

LEE: "* * * they didn't bribe anybody I know of." (see page 423 of the record of Congressional hearing.) Your affiant affirmatively states that he has not at any time or in any place attempted to nor bribed anyone whatsoever.

That your affiant is informed and believes and upon such information and belief, alleges that the said John H. Fahey, Commissioner of the Federal Home Loan Bank Administration, Harold Lee, Governor of the Federal Home Loan Bank System, A. V. Ammann, purported Conservator of the Long Beach Federal Savings and Loan Association and others in responsible charge and management of the Federal Home Loan Bank Administration, have prejudged, determined, concluded and decided before hearing that they will not, under any circumstances irrespective of evidence submitted, ever return to the Long Beach Federal Savings and Loan Association and its duly elected officers and directors, whoever they may be, the assets of said Association, and that conclusions of said Administration is evidenced by the statement of Mr. Harold Lee, Governor of the Federal Home Loan Bank System, by the statements made by him while testifying in defense of John H. Fahey before the Select Committee of the House of Representatives, to investigate acts of Executive Agencies which exceed their authority, which statements were as follows, to wit:

Mr. LEE. "You haven't heard the other side of the case yet, Congressman, and when this is finally determined in court, I am sure, quite confident, that it will be determined favorably to the Federal Home Loan Bank Administration, and I think if you don't withhold opinion, you will be embarrassed, because we have the facts.

243

Mr. JENNINGS (Congressman). I am not going to be embarrassed.

Mr. LEE. I don't think Mr. Gregory can ever get it back from that institution.

Mr. JENNINGS. You have destroyed it."

Dated At Los Angeles, California, this 18th day of June 1946.

T. A. Gregory,
T. A. GREGORY.

Subscribed and sworn to before me this 18th day of June 1946.

MAXINE LAUREL BERWEHLER,
Notary Public in and for said County and State.

My commission expires Jan. 10, 1950.

244 Received copy of the within notice and supporting documents this 20th day of June, 1946.

By Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for R. H. Wallis.

Received copy of the within notice and supporting documents this 20 day of June, 1946.

JAMES CARTER,
U. S. Attorney.
RONALD WALKER,
Asst. U. S. Attorney.
MILDRED L. KLUCKHOHN,
Asst. U. S. Attorney.
By GERTRUDE M. JOHNSON,
Attorneys for Defendant, A. V. Ammann, individually, and as Conservator for the Long Beach Federal Savings and Loan Association.

245 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of service by mail of notice of preliminary injunction in re: to restrain the holding of administrative hearing, with supporting documents

Filed June 21, 1946

Fay Dealey, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles: that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 1009 —Pacific Southwest Building, 215 W. 6th Street, Los Angeles 14, California, that on the 20th day of June, 1946, affiant served the Notice of Motion for Preliminary Injunction to Restrain the Holding of Administrative Hearing, together with all Supporting Documents thereto, on the defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as Commissioner and Administrator of the Federal Home Loan Bank Administration, and the defend-

ant, Title Service Company, by mailing to its Attorney, Harry O. Wallace of Thomas & Wallace, Esq., and upon the Long Beach Federal Savings and Loan Association, by mailing to its attorney, Charles K. Chapman, by placing a true copy thereof in envelopes addressed respectively, as follows:

246 John H. Fahey, Federal Home Loan Bank Commissioner, Federal Home Loan Bank Building, Washington, D. C.

Harry O. Wallace of Thomas & Wallace, Esq., 602 Jergins Trust Bldg., Long Beach, California.

Charles K. Chapman, Ocean Center Building, Long Beach, California.

and then by sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the persons by and for whom said service was made.

That there is delivery service by United States mail at the places so addressed, and there is a regular communication by mail between the place of mailing and the places so addressed.

Fay Dealey,
(S.) FAY DEALEY.

Subscribed and sworn to before me this 20th day of June 1946.

[SEAL] Maxine Laurel Berweiler,
(S.) MAXINE LAUREL BERWEILER,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Jan. 10, 1950.

247 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Statement of defendant and cross-claimant Title Service Company on motion for preliminary injunction to restrain the holding of an administrative hearing

Filed June 28, 1946

Comes now the Defendant and Cross-Claimant, Title Service Company, a California corporation, and makes its

statement in reply to the Notice of Motion for Preliminary Injunction to Restrain the Holding of an Administrative Hearing, Motion for Preliminary Injunction to Restrain the Holding of Administrative Hearing, Statement and Points and Authorities in Support of said motion heretofore filed by the Plaintiffs herein and noticed for hearing on the 1st day of July, 1946, as follows:

I

That this Answering Defendant and Cross-Claimant has heretofore filed its Cross-Claim in Interpleader herein and has deposited with the Registry of this Honorable
248 Court 174 promissory notes aggregating $800,250.00 in value, and deeds of trust securing the same wherein this Defendant and Cross-Claimant holds the legal title to 174 parcels of real property in Los Angeles County, California; together with its Bill in the Nature of Interpleader affecting approximately 8000 promissory notes aggregating the approximate total amount of $12,000,000.00 and deeds of trust securing the same, wherein this Defendant and Cross-Claimant holds the legal title to approximately 8000 separate parcels of real property located in Los Angeles County, California. That in said Answer and Cross-Claim in Interpleader this Defendant and Cross-Claimant has disclaimed any interest in any of said real property, other than as Trustee upon said deeds of trust, and has prayed that this Honorable Court, by its order, establish and determine the rights of the other litigating parties to this action to said evidences of title.

II

That prior to the filing of its Answer and Cross-Claim in Interpleader this Defendant had been served as John Doe One, by the Plaintiffs herein, and that it had received conflicting demands from the other parties to this litigation with reference to the delivery of the evidences of title hereinabove referred to. On the one hand purported Demands for Reconveyances under said deeds of trust had been delivered to this Defendant executed by the Defendant Ammann, as the purported Conservator of the Defendant, Long Beach Federal Savings and Loan Association, and as the agent of the Defendant, John H. Fahey, in

his claimed capacity as the Federal Home Loan Bank Commissioner, and on the other hand a written demand has been served upon this Defendant by the Defendant, Long Beach Federal Savings and Loan Association, forbidding it to recognize the purported authority of said parties and demanding that it not reconvey upon such requests and further advising it that said Long Beach Federal Savings and Loan Association would hold it financially responsible for any losses incurred if such reconveyances were made, by reason of the fact that
249 the Defendant, Long Beach Federal Savings and Loan Association did not recognize the purported authority of said Defendants, and that said Long Beach Federal Savings and Loan Association, was the payee under all of said promissory notes and beneficiary under all of said deeds of trust.

III

That the gravamen of the pending action is the authority claimed by said Defendants, John H. Fahey and A. V. Ammann. That, therefore, the authority of the said Defendant Fahey and Ammann to either call or proceed with an Administrative Hearing is in issue before this Honorable Court and as a result thereof this Defendant and Cross-Claimant in Interpleader cannot and should not be bound by any finding made in, or as the result of, such Administrative Hearing.

IV

That with the deposit with the Registry of this Honorable Court, in interpleader, of the 174 promissory notes and deeds of trust securing the same, and with the filing in this Honorable Court of its Cross-Claim in Interpleader by this Defendant praying for adjudication of the rights thereto and further praying for an adjudication of the rights to approximately 8000 other promissory notes and deeds of trust securing the same, now in the custody and possession of the Defendants, John H. Fahey and A. V. Ammann, as hereinabove set forth, this Honorable Court was vested with the sole jurisdiction to make such determination and that any finding made in such Administrative

Hearing would be an idle act insofar as this Defendant is concerned.

V

That if such Administrative Hearing should be had that this Defendant would not have any opportunity to be heard.

VI

That should said Administrative Hearing be had
250 and should the findings and rulings made therein, or as a result thereof, be other and different than those made by this Honorable Court, that the title to real property located in Los Angeles County, California, evidenced by the deeds of trust hereinabove referred to, would be further clouded, that irreparable damage would be caused to the equitable owners thereof and that a multiplicity of actions would further ensue, to prevent all of which was the reason for the filing of the Cross-Claim in Interpleader by this Defendant.

Wherefore, although the Defendant, Title Service Company, a California corporation, is a disinterested party in interpleader, it is respectfully urged that the holding of said Administrative Hearing would be in conflict with the jurisdiction of this Court, would be an idle act, would further cloud titles to real property located within the jurisdiction of this Honorable Court, and would serve no useful purpose and should, therefore, be enjoined.

Respectfully submitted,

THOMAS AND WALLACE,
By H. O. WALLACE,
Attorneys for Defendant and Cross-Claimant in Interpleader, Title Service Company.

251 STATE OF CALIFORNIA,
County of Los Angeles, ss:

H. O. Wallace, being first duly sworn, says:

That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of 18 years and is not a party to the within and foregoing action; but that he is one of the attorneys of record therein; that affiant's business address is 602 Jergins Trust Building, Long Beach 2, California; that on the 27th

day of June, 1946, affiant served the within Statement of Defendant and Cross-Claimant Title Service Company On Motion for Preliminary Injunction to Restrain the Holding of an Administrative Hearing, on the Plaintiffs in said action by placing a true copy thereof in an envelope addressed to Westover and Smith, Attorneys for the Plaintiff at the business address of said attorneys as follows: Westover and Smith, Attorneys-at-Law, 215 West Sixth Street, Los Angeles 14, California, and upon the Defendants, John H. Fahey and A. V. Ammann, in said action by placing a true copy thereof in an envelope, addressed to James Carter, United States Attorney, Ronald Walker and Mildred L. Kluckhohn, Assistant United States Attorneys, at the business address of said attorneys for said Defendants, as follows: James Carter, United States Attorney, Ronald Walker and Mildred L. Kluckhohn, Assistant United States Attorneys, 600 Federal Building, Los Angeles 12, California, and by then sealing said envelopes and depositing the same, with postage fully prepaid, in the United States Post Office at Long Beach, California; that there is delivery service by United States mail at the place so addressed, and there is
252 a regular communication by mail between the place of mailing and the place so addressed.

H. O. WALLACE.

Subscribed and sworn to before me this 27th day of June 1946.

[SEAL] HAZEL ROBERTS,
Notary Public in and for the County of Los Angeles, State of California.

253 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion for preliminary injunction to restrain the holding of administrative hearing
Filed June 28, 1946

Comes now, the Defendant and Cross-Claimant in Interpleader Title Service Company, a Corporation, and complaining of the defendants, John H. Fahey, individu-

ally, John H. Fahey, as Chairman of the Home Loan Bank Board, A. V. Ammann, individually, and A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, and any and all of the agents, employees, servants, subordinates, and hearing officers purporting or attempting to hold any purported hearing or hearings under authority of, or as representatives of said John H. Fahey, or the Federal Home Loan Bank Board of Administration, and for grounds of Motion to be made for this Preliminary Injunction state that:

That unless restrained from so doing, the defendant,
John H. Fahey, as Chairman of the Federal Home
254 Loan Bank Board, and as Administrator of the
Federal Home Loan Bank Administration and the defendant, A. V. Ammann, his purported Conservator for the Long Beach Federal Savings and Loan Association, by and through their representatives, agents, subordinates and un-named hearing officers, propose to hold a purported administrative hearing, commencing on July 3, 1946, pursuant to their Order No. 5309 of the Federal Home Loan Bank Administration to take testimony for submission to the Federal Home Loan Bank Administration and to John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as Administrator of the Federal Home Loan Bank Administration for determination by himself, as to whether or not he, himself, acted properly and within his authority and jurisdiction in having appointed his co-defendant, A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, and in having authorized the seizure, without prior notice and/or hearing, of the said Long Beach Federal Savings and Loan Association and its $26,000,000.00 of assets.

That the provisions of the Federal Acts, under which the above named defendant and the Federal Home Loan Bank Administration purport to act, and the rules, regulations and directions purportedly made and adopted pursuant to and under each and all such Federal Acts, are unconstitutional and repugnant to the Constitution of the United States and Amendments IV and V thereof, and the attempt to delegate legislative and judicial authority

to the Federal Home Loan Bank Administration and its Administrator and Commissioner, the defendant, John H. Fahey, was ineffectual, incomplete and/or an improper and unconstitutional attempt to delegate such judicial and legislative authority.

That the said proposed administrative hearing would not be conducted in a fair and impartial forum for the hearing of the matters in controversy, because the defendant, John H. Fahey, as Federal Home Loan Bank Administrator, in passing upon, adjudicating and determining the propriety and validity of his own act and the acts of his subordinates in the Federal Home Loan
255 Bank Administration, performed and done pursuant to his own direction and authority, would not be a fair and impartial adjudicator, but they have demonstrated by their actions and their statements, that they will be influenced in such adjudication by bias and prejudice, and they have already decided and determined the issues upon which they propose to hold said administrative hearing.

That the questions proposed to be heard and determined by such Federal Home Loan Bank Administration at the said purported hearing, to wit: the question "as to why the Conservator should not have been appointed and why an order should be entered by the Federal Home Loan Bank Administration, discharging the Conservator" are questions involving the constitutionality of the rules, regulations and acts or parts thereof, under which said Conservator was allegedly appointed and which same questions are here raised in this litigation now pending before this Honorable Court composed of three judges, under these proceedings, had pursuant to the provisions of 380 (a) of Title 28 of the Judicial Code.

That this party, Defendant and Cross-Claimant in Interpleader, is not a party to said purported administrative hearing, and that there are various other parties to this present pending litigation, to wit: plaintiffs and another interpleading party, who are not parties to said purported administrative hearing, yet whose rights and interests might be seriously affected by any attempted or purported decision or determination which might be so allegedly made by the defendant, John H. Fahey, as Fed-

eral Home Loan Bank Commissioner, Administrator, or Chairman of the Board, or which might be made or attempted to be made by any part of said Federal Home Loan Bank Administration, its agents, employees, servants, subordinates and/or hearing officers.

That the holding of said purported administrative hearing, the constitutionality of which is placed in question by this pending action, would constitute a multiplicity of actions, be an encroachment and infringement upon the jurisdiction and authority of this Honorable Court, to hear and determine the questions, including constitutional questions, raised by this pending action and would cause immediate and irreparable damage and injury to this Defendant in that in said Administrative Hearing and as a result thereof said defendants will purportedly determine the validity of their acts in the appointment of an alleged Conservator for the Defendant, Long Beach Federal Savings and Loan Association, which is the major issue before this Honorable Court in the pending action, and, should the finding made in, and as a result thereof, uphold the actions of said defendants, Fahey and Ammann, that they would then demand that this Defendant and Cross-Claimant in Interpleader convey or reconvey the title to the approximately 8000 parcels of real property Located in the County of Los Angeles, State of California, now held by this Defendant and Cross-Claimant, as trustee under deeds of trust given to secure the payment of the same number of promissory notes wherein the Defendant Long Beach Federal Savings and Loan Association is the payee and beneficiary, all of which said promissory notes and deeds of trust are before this Honorable Court in interpleader or in the nature of interpleader.

256

That in making such adjudication said defendants would be usurping the function of this Honorable Court in determining the constitutionality of the Acts of Congress which are questioned in the pending action. That such acts would further cloud the titles to approximately 8000 parcels of real property located in the County of Los Angeles and State of California, valued at approximately $12,000,000.00, and subject this Defendant, as the holder of the legal title thereto, to a multitude of actions,

and cause irreparable damage and injury, not only to this Defendant, but also to the approximately 8000 owners of the equitable titles to said realty, all of whom are strangers to this action and without recourse against the Defendants Fahey and Ammann. That on the 27th
257 day of June, 1946, a Lis Pendens in said action was recorded in the office of the County Recorder of Los Angeles County, California, pursuant to the provisions of Section 409 of The Code of Civil Procedure of the State of California covering substantially all of the parcels of real property hereinabove referred to and that any purported adjudication made in, or as a result of said Administrative Hearing, would not operate to clear any of the titles to real property affected by said Lis Pendens, but could only further cloud the same.

Whereupon now come the Plaintiffs, in the above entitled action and make their Motion, as follows, to wit:

Motion for preliminary injunction

That this Honorable Court issue a Preliminary Injunction restraining and enjoining the defendants, John H. Fahey, individually, and as Chairman of the Home Loan Bank Board, and/or A. V. Ammann, individually and as purported Conservator for the Long Beach Federal Savings and Loan Association and/or any and all of their agents, employees, servants, representatives, hearing officers, and/or subordinates, and each and all of them from, directly or indirectly, during the pendency of the above entitled action, and until the final determination of the said action, or until further order of this Honorable Court, proceeding with, holding, or attempting to hold any hearing or hearings, pursuant to Order No. 5309 of the Federal Home Loan Bank Administration, or at all, or, if any such hearings have heretofore been commenced from continuing therewith or making any findings, conclusions or adjudications, or issuing any orders based thereon, or from hearing or determining any other questions, issues or matters, which are now or may hereafter be pending before this Honorable Court in the above entitled action, without the further written order of this Court being first had and obtained.

The above Motion is made and based upon the

258 Notice of Motion for Preliminary Injunction to restrain the holding of an administrative hearing heretofore served and filed and upon the verified complaint herein, affidavits, records, pleadings and papers on file in this action and upon the Oral Testimony of witnesses, documents, records and files, which may be presented and introduced at said hearing on this Motion for Preliminary Injunction to restrain the holding of an administrative hearing.

In support hereof, there is attached hereto, Defendant and Cross-Complainant Title Service Company's Summary Statement of Pertinent Facts re: Preliminary Injunction to Restrain the Holding of Administrative Hearing, together with supporting affidavits and documents, and its Points and Authorities.

Dated: At Long Beach, California, this 28th day of June, 1946.

THOMAS & WALLACE,
By H. O. Wallace;
H. O. WALLACE,
Attorneys for Defendant and Cross-Complainant, Title Service Company.

259 Received copy of the within Motion, Statement, Affidavit, and Memorandum this 28th day of June, 1946.

RONALD WALKER,
Asst. U. S. Attorney,
Attorneys for Defendant, Ammann.

260 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of Ethel L. Roberts in support of motion to restrain holding of administrative hearing.

Filed June 28, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ethel L. Roberts, being first duly sworn, deposes and says:

That she is an officer, to wit: the Assistant Secretary of Title Service Company, a corporation, one of the

defendants and cross-claimants in interpleader, in the above entitled and numbered action. That she is one of the executive officers of said Title Service Company, which is a corporation, duly organized and existing under and by virtue of the Laws of the State of California, having its principal place of business in the City of Long Beach, County of Los Angeles and State of California.

That said Title Service Company is the trustee
261 named in approximately 8000 deeds of trust given to secure the payment of an equal number of promissory notes aggregating in value the sum of approximately $12,000,000.00. That the beneficiary and payee under said deeds of trust and promissory notes is the Long Beach Federal Savings and Loan Association, one of the defendants in this action.

That heretofore, and prior to the commencement of this action, to wit: on the 20th day of May, 1946, the Defendant A. V. Ammann, as the purported Conservator appointed by the Defendant John H. Fahey, the Commissioner of the Federal Home Loan Bank, took over the physical assets of the Defendant Long Beach Federal Savings and Loan Association and has refused to give any receipt to any person for the assets so taken. That the Title Service Company occupied a portion of the same offices as did the said Long Beach Federal Savings and Loan Association and that all of said promissory notes and deeds of trust were in said offices on said 20th day of May 1946.

That thereafter the above entitled and numbered action was commenced by the plaintiffs above named against the said defendants Fahey and Ammann for the purpose of restraining any merger of said Long Beach Federal Savings and Loan Association with any other financial institution and to prevent and restrain the removal of the assets of said Association by said defendants and to prevent and restrain the comingling of said assets with those of any other institution; to declare the invalidity of the acts of said defendants and the unconstitutionality of the laws under which they purported to act; to require the return of the assets of the Long Beach Federal Savings and Loan Association to the control of its duly elected and qualified officers; and for an accounting.

That subsequent to the commencement of this action and on or about the 31st day of May, 1946, the Defendant A. V.

Ammann, in his capacity as the purported Conservator of the Defendant Long Beach Federal Savings and
262 Loan Association did deliver unto Title Service Company 174 promissory notes and deeds of trust securing the same, on all of which said securities the Long Beach Federal Savings and Loan Association was the payee and beneficiary, together with a requests for reconveyances covering all thereof, and did demand that this defendant execute and deliver unto him said reconveyances. That subsequent thereto this defendant did inquire from said Long Beach Federal Savings and Loan Association as to whether or not the Defendant Ammann had A authority to act for it in demanding that the execution and delivery of such reconveyances and that on or about the 3rd day of June, 1946, said Long Beach Federal Savings and Loan Association did, in writing, advise the Title Service Company that it never had and did not then recognize the authority under which said Defendant Ammann purported to act as its Conservator and did notify Title Service Company not to make, execute or deliver any reconveyances upon the order or request of said A. V. Ammann, either upon the 174 deeds of trust then in question, or upon any other deeds of trust wherein said Long Beach Federal Savings and Loan Association was the beneficiary. That shortly thereafter this defendant, Title Service Company, was served with process in this action by the United States Marshal, this defendant being served as John Doe One, as described in the complaint on file herein.

That thereafter, by reason of the fact that this defendant was subject to the conflicting demands of the Defendants Long Beach Federal Savings and Loan Association, on the one hand, and those of the Defendant A. V. Ammann, as aforesaid, on the other hand, this defendant did file its answer and cross-claim in interpleader in this action and did physically deposit in the Registry of this Court all of the said 174 promissory notes and deeds of trust securing the same, together with the alleged demands for reconveyance thereof executed by the said Ammann. That the total value of said securities so deposited is $800,250.00 and that all of the property described in said deeds of trust is located in the County of Los
263 Angeles and State of California. That in addition

to the physical deposit of said securities, this defendant did, in its said crossclaim in interpleader allege the fact to be, and it is, that there is a total of approximately 8000 of said promissory notes and deeds of trust upon property in Los Angeles County, California, securing the same and that the total aproximate value of said promissory notes is $12,000,000.00 and did pray that this Honorable Court require that the Defendants Fahey and Ammann deliver up said securities into the custody of this Court and that the Court determine the respective rights of all named defendants in and to all of said securities.

That affiant is informed and believes, and on that ground alleges, that the said Defendant A. V. Ammann, as the purported Conservator of the Defendant Long Beach Federal Savings and Loan Association, either has, or has attempted to, effectuate the substitution of trustees on a part or all of said deeds of trust and to thereby deprive this defendant of the legal title to the property described therein. That on the 27th day of June, 1946, the Defendant Title Service Company did cause to be recorded in the office of the County Recorder of the County of Los Angeles, State of California, a Lis Pendens referring to the above entitled and numbered action.

That affiant is informed and believes, and on that ground alleges, that the Defendant John H. Fahey, as the Commissioner of the Federal Home Loan Bank, his officers, agents and assistants, and the Defendant A. V. Ammann, as one of such officers and agents, propose to hold an Administrative Hearing to determine whether or not they have acted within their rights in taking over the said Long Beach Federal Savings and Loan Association and its assets, said hearing having been called by the Order of the Federal Home Loan Bank Administration numbered 5309 and dated June 5th., 1946. That no actual notice
264 of said proposed hearing has ever been served upon the Defendant Title Service Company, nor upon any of its officers or its counsel; but that the only notice thereof which has come to the attention of said defendant is a purported copy of said order included as an exhibit in the Motion to Dismiss filed by and on behalf of the Defendant A. V. Ammann herein. That by reason thereof this defendant has not been able to prepare and file a motion to restrain said hearing and to prepare and serve notices

thereof within the time prescribed by the rules of this Honorable Court to enable the same to be heard contemporaneously with a similar motion filed by the plaintiffs herein.

That affiant is informed and believes, and on that ground alleges, that should said hearing be had that it would be a nullity for the reason that the persons conducting said hearing would be acting in the multiple positions of prosecutors, triers of fact and judges, and that they have heretofore committed themselves and have prejudged the case and have, under oath, announced the results of their prejudgment. That affiant has seen portions of the transcript of testimony taken before the Committee of the House of Representatives of the United States Investigating the Acts of Executive Agencies Which Exceed their Authority which substantiate this allegation but that the transcript itself is not available from which affiant can quote, or from which excerpts can be taken for inclusion herein as exhibits.

That the reason for the filing of the Cross-Claim in Interpleader and in the Nature of Interpleader herein by the Defendant Title Service Company was to relieve itself of the responsibility imposed upon it by the deeds of trust hereinabove referred to and the liability thereon imposed by the cross demands of the Defendants Long Beach Federal Savings and Loan Association, on the one hand, and of the Defendant A. V. Ammann, as the purported Conservator for the said Association, on the other. That under the provisions of the interpleader statute,
265 Title 28, Section 41 (26) of the Judicial Code of the United States, this Honorable Court is vested with the mandatory power to restrain any judicial hearing which would subject the interpleading party to a multiplicity of suits wherever such judicial hearings may be held.

That the Defendant Title Service Company has not been served with any notice of said Administrative Hearing and under the terms of the copy of said notice which has come to its attention it would have no opportunity to be heard, notwithstanding the fact that it holds the legal title to real property, as trustee, under deeds of trust of an approximate value of $12,000,000.00, which constitute one

of the major assets of said Long Beach Federal Savings and Loan Association. That if said Administrative Hearing is allowed to be held that findings, conclusions and orders may be made therein, or thereafter, which would conflict with orders and/or judgments made by this Honorable Court in the pending action—and which would, in effect, usurp the functions of this Honorable Court. Since the provisions of Title 28, Section 380 (a) of the Judicial Code of the United States provide for the adjudication of the questions before this Honorable Court by a Court of Three (3) judges, an attempt by an administrative body to adjudicate the same matters appears to be presumptive to say the least. That such conflicting orders would result in placing the Defendant Title Service Company in the same position wherein it now is, to wit: the subject of conflicting demands but the demands made by the Defendants Fahey and/or Ammann being enhanced by color of a quasi-judicial ruling.

That none of the holders of any of the equitable title under any of said deeds of trust were included in the said Order calling said Administrative Hearing and that none of them would be able to be heard thereat, and that the legal title to property in which they held the equitable title would be affected thereby.

That for all of the foregoing reasons, the holding of such proposed Administrative Hearing would be a
266 nullity and of no effect and could only further complicate the matters pending before this Court, and, therefore, the holding of or proceeding with such proposed Administrative Hearing should be enjoined.

Dated: At Long Beach, California this 28th day of June, 1946.

Ethel L. Roberts,
ETHEL L. ROBERTS,
Assistant Secretary of Title Service Company, a California Corporation.

Subscribed and sworn to before me this 28th day of June, 1946.

[SEAL] HAZEL ROBERTS,
Notary Public in and for said County and State.

271 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of J. Francis Moore

CITY OF WASHINGTON,
District of Columbia, ss:

I, J. Francis Moore, being first duly sworn, do on oath depose and say that I am the duly appointed, qualified, and acting Secretary to the Federal Home Loan Bank Administration and of the Federal Home Loan Bank Board and as such Secretary I have custody and control of the records of said Federal Home Loan Bank Administration and said Federal Home Loan Bank Board, and that I have full and complete knowledge of the facts herein stated.

I further depose and say that according to said records there was received in the office of the Federal Home Loan Bank Board application for permission to organize a Federal savings and loan association, subscription to shares consisting of three sheets, and petition for charter dated May 21, 1934, which petition was signed by T. A. Gregory, J. S. Watts, J. E. Gregory, J. K. Reedor and S. I. Bacon; that in said application for permission to organize, the following statement, among others, appeared:

272 "(4) Applicants agree not to represent themselves as authorized to organize such an association until this application is acted upon favorably by said Board or the chief executive officer of the Federal home loan bank of the district or a duly authorized organizer for the Board, and that upon such action they will proceed only in accordance with the provisions of Home Owners' Loan Act of 1933 and rules and regulations made thereunder."

That in said petition for charter, among others, are the following statements:

"5. Petitioners, in good faith, desire to promote thrift and home ownership in their community by the accumulation of funds for home financing in accordance with the provisions of said act and the rules and regulations made thereunder.

"7. Wherefore, petitioners pray that they, their associates, and successors, be incorporated and made a body corporate under said name and style with all powers, privileges, and immunities, and subject to such conditions and restrictions as are provided in said act and rules and regulations made thereunder."

That pursuant to such application and petition a charter, known as Charter E, was issued to the Long Beach Federal Savings and Loan Association, Long Beach, California, on July 10, 1934, and accepted by it; that said charter contained, among others, the following provisions:

"15. The association shall at all times be subject to the provisions of the Home Owners' Loan Act of 1933, providing for Federal savings and loan associations, and to any amendments thereof, and to any valid rules and regulations made thereunder as the same may be amended from time to time.

"19. The bylaws adopted by the association shall provide for the management of the association within the provisions of the law and this charter and the rules and regulations of the Federal Home Loan Bank Board.

"20. The association may be liquidated, merged, consolidated, or reorganized, as is provided in the rules and regulations for Federal savings and loan associations made by the Federal Home Loan Bank Board."

That at the time of the application for and issuance and acceptance of such charter, the following regulation was in full force and effect:

"14. Whenever it shall appear to the Federal Home Loan Bank Board that the interests of the creditors or shareholders of any such association are being jeopardized because such association has violated its charter, or is conducting its business in an unsafe or unauthorized manner, or if such association shall refuse to submit its books, papers and concerns to the inspection of said Board, or any examiner appointed by said Board, or if any officer or director thereof shall refuse to be examined upon oath touching the concerns of any such association, or if any such association shall suspend payment of its obligations, or if from any examination or report provided for by these rules and regulations, the Board shall have reason to conclude that such association is in

an unsound or unsafe condition to transact business, or if any such association shall neglect or refuse to observe a lawful order of the Board, the Board may, on becoming satisfied of the existence of any or all of the conditions set forth above, forthwith appoint a receiver or conservator, and require of him such bond and security as it deems proper.

"Such receiver or conservator, under the direction of the Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and shall make prompt report to the Board of the condition of the association and shall, after 10 days' notice in writing to all shareholders, borrowers, and creditors of the association, sent by mail to their last address as shown on the books of the association, conduct a hearing at the office of the association or some other convenient place designated by him in such notice, at which hearing any interested parties may submit any evidence as to the condition of the association or its management, and may submit any plan for its operation or for a disposition of its assets and a record shall be made and kept of such hearing, and one copy thereof filed with the Federal home-loan bank of which such association is a member and one copy submitted to the Federal Home Loan Bank Board of the evidence submitted at such hearing and the plans submitted for the operation of such association or for the disposition of its assets. The conservator or receiver may subpena witnesses, compel the production of books, records, the documents, swear witnesses, and examine them under oath, and may apply to any court of competent jurisdiction for the enforcement of such processes. Thereafter the conservator or receiver, as the case may be, shall recommend to the Federal Home Loan Bank Board a plan for liquidation, merger, consolidation, or reorganization of the association, and the Board shall give consideration to the same and enter an order providing for the release of the association and its continued operation and the terms therefor or for its liquidation, merger, or consolidation and the terms therefor. Thereupon the conservator or receiver, as the case may be, shall proceed to dispose of the association as is provided in such order. All costs of such

proceedings shall be approved by the Federal Home Loan Bank Board and assessed against the association and its assets and paid by the association or from its assets. In the event of a legal necessity therefor, the conservator or receiver, as the case may be, or any interested party, may apply to any court of competent jurisdiction for direction or for confirmation of any sale or disposition of assets, but said Federal Home Loan Bank Board shall have full and exclusive authority, power, and jurisdiction to take possession by a conservator or receiver and to hold and administer the assets on an equitable basis."

I further depose and say that on or about the 8th day of April, 1937, there was received by the Federal Home Loan Bank Board the petition of the Long Beach Federal Savings and Loan Association for an amendment to its charter, petitioning that the present charter of the Association be amended to read in the form of Exhibit K of the rules and regulations for Federal savings and loan associations; that thereafter and on the 13th day of April, 1937, and pursuant to said petition, an amended charter was issued to said Long Beach Federal Savings and Loan Association and accepted by it, known as Charter K; that said Charter K contained, among others, the following provisions:

"3. Objects and powers.—The objects of the association are to promote thrift by providing a convenient and safe method for people to save and invest money and to provide for the sound and economical financing of homes. The statute, this charter, and rules and regulations made thereunder provide for examination and supervision and at the same time for the protection of all private rights concerned, and shall be construed in keeping with the best practices of local mutual thrift and home financing institutions in the United States.

"The association shall have perpetual succession and power to sue and be sued, complain and defend in any court of law or equity; to have a corporate seal, affixed by imprint, facsimile or otherwise; to appoint officers and agents as its business shall require, and allow them suitable compensation; to have bylaws not inconsistent with the Constitution or laws of the United States, this charter, and rules and regulations of the Federal Home

Loan Bank Board, providing for the management of its property and regulation and government of its affairs; to wind up and dissolve, merge, consolidate, or reorganize in the manner provided by law and rules and regulations made thereunder; and to conduct business in the territory of the United States except as otherwise limited in this charter. The association may purchase, hold, and convey real and personal estate consistent with its objects, purposes, and powers; may mortgage or lease any real and personal estate; and may take such property by gift, devise, or bequest. Unless authorized by the Federal Home Loan Bank Board, the association may not invest in an office building or buildings for the transaction of the business of the association an amount representing the cost of land and buildings in excess of the sum of its undivided profits and reserve accounts."

That at the time of the application for and issuance and acceptance of such amended charter, the following regulation was in full force and effect:

"SEC. 51. (a) Whenever it shall appear to the Board that the interests of the creditors or members of any Federal association are being jeopardized because such association has violated its charter, bylaws, or these rules and regulations, or is conducting its business in an unsafe or unauthorized manner; or if such association shall refuse to submit its books and papers for inspection by the Board or any examiner appointed by the Board; or if any officer or director thereof shall refuse to be examined under oath by a representative appointed by the Board concerning the affairs of any such association; or if any such association shall suspend payment of its obligations; or if the Board shall conclude that such association is in an unsafe or unsound condition to transact business; or if any such association shall neglect or refuse to observe a lawful order of the Board, the Board may, on becoming satisfied of the existence of any or all of the conditions set forth above, forthwith appoint a conservator for such association. Such conservator may propose a plan of reorganization to the Board. The Board may approve a reorganization of such a Federal association.

"(b) In the event that the Board determines that it is necessary to liquidate such association, the Board will

appoint the Federal Savings and Loan Insurance Corporation as receiver for the purpose of liquidation.

275. "(c) Before the appointment of a conservator or receiver, the Federal association will be given opportunity to be heard: provided, however, that the Board may appoint a temporary conservator pending such hearing."

That since the 13th day of April, 1937, the said Association has continued to operate under said Charter K, which has been amended only in respect to the voting rights of members, bonus and bonus reserve provisions, and lending powers of the Association: that said amendments were made pursuant to proposals by the Association.

That the exhibits attached hereto and made a part hereof, marked at the bottom of each sheet as Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F and Exhibit G, are full, true and complete copies of, respectively:

A—Application for Permission to Organize
B—Subscriptions to Shares
C—Petition for Charter
D—Charter E
E—Petition for Amendment to Charter E
F—Charter K
G—Order Amending Charter K

J. FRANCIS MOORE.

Subscribed and sworn to before me this 21st day of June 1946.

[SEAL] FREDERICK J. RAMSEY,
Notary Public, District of Columbia.

My Commission expires May 14, 1947.

276 *Exhibit "A"*

EXHIBIT B

APPLICATION FOR PERMISSION TO ORGANIZE A FEDERAL SAVINGS AND LOAN ASSOCIATION

LONG BEACH, CALIFORNIA, May 15, 1934.

FEDERAL HOME LOAN BANK BOARD,
Washington, D. C.

DEAR SIRS: The undersigned respectfully apply for permission to organize a Federal savings and loan association and show that—

(1) Applicants are citizens of the community stated in above date line and desire to form a local mutual thrift institution in which people may invest their funds and to provide for the financing of homes.

(2) Applicants show that they are persons of good character and responsibility and that in their opinion a necessity exists for such an institution in their community and that there is reasonable probability of its usefulness and success and that the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions.

(3) Applicants further show that they are ready to submit such evidence as may be required by the Board or its organizer, or the Federal home loan bank, of the facts herein represented.

(4) Applicants agree not to represent themselves as authorized to organize such an association until this application is acted upon favorably by said Board or the chief executive officer of the Federal home loan bank of the district or a duly authorized organizer for the Board, and that upon such action they will proceed only in accordance with the provisions of Home Owners' Loan Act of 1933 and rules and regulations made thereunder.

Name	Occupation	Address
S. I. Bacon	Wilmington Transp. Co.	Wilmington, Calif.
J. S. Watts	Retired	311 Obispo Ave.
H. H. Law	Service Sta. Owner	4337 E. 4th St., Long Beach.
J. K. Reeder	Lawyer	Bellflower.
M. T. Killingsworth	Oil Producer	Artesia, Calif.
J. E. Gregory	Pres. Bellflower Bldg. Loan	378 Somerset Ave., Bellflower.
T. A. Gregory	Pres. Reliable Bldg. Loan	Bellflower, Calif.

After reading and considering the foregoing application, and upon consideration of the same, said application is granted upon the conditions stated in the application. This the 5 day of May, 1934.

W. F. DUPAY.

(For the files of the Federal Home Loan Bank Board)

277 EXHIBIT C

SUBSCRIPTIONS TO SHARES

LONG BEACH, CALIFORNIA, May 15th, 1934.

FEDERAL HOME LOAN BANK BOARD,
Washington, D. C.

DEAR SIRS: The undersigned hereby subscribe the number of shares of the par value of $100 each of the class indicated and contract to pay upon the grant of a charter the amount of cash stated, as is indicated opposite their names signed hereto, in a Federal savings and loan association for which an application for permission to organize has been granted under Home Owners' Loan Act of 1933, providing for the organization of Federal savings and loan associations, and rules and regulations made thereunder, and hereby agree to take such shares and make such cash payment promptly upon the grant of a charter and the organization of such association and to cooperate and develop such an institution for the promotion of thrift and local home financing.

EXHIBIT C

SUBSCRIPTIONS TO SHARES

LONG BEACH, CALIFORNIA, May 15th, 1934.

FEDERAL HOME LOAN BANK BOARD,
Washington, D. C.

DEAR SIRS: The undersigned hereby subscribe the number of shares of the par value of $100 each of the class indicated and contract to pay upon the grant of a charter the amount of cash stated, as is indicated opposite their names signed hereto, in a Federal savings and loan association for which an application for permission to

organize has been granted under Home Owners' Loan Act of 1933, providing for the organization of Federal savings and loan associations, and rules and regulations made thereunder, and hereby agree to take such shares and make such cash payment promptly upon the grant of a charter and the organization of such association and to cooperate and develop such an institution for the promotion of thrift and local home financing.

Name	Address	Occupation	Number of Shares	Class of Shares [1]	Cash to be Paid Upon Organization
Lula B. Gregory	Artesia, Calif.	Merchant	10	Optional	$5.00
C. Gregory	Artesia, Calif.	Student	10	Optional	5.00
L. N. Schilling	Artesia, Calif.	Bldg. Loan Secy.	10	Optional	5.00
M. T. Killingsworth	Artesia, Calif.	Oil Production	10	Optional	5.00
Ivy M. Killingsworth	Artesia, Calif.	Wife	10	Optional	5.00
Mark Whalen	1036 Chestnut Ave., Long Beach, Calif.	Real estate	10	Optional	5.00
A. P. Harlan	1319 Midway, Bellflower, Calif.	Automobile Salesman	10	Optional	5.00
Emma J. Bartlett	617 Olive St., Bellflower, Calif.	Retired	10	Optional	5.00
Edith L. Timbrell	617 Olive St., Bellflower, Calif.	Retired	10	Optional	5.00
W. T. Russell	1517½ Walnut, Artesia, Calif.	Contractor	10	Optional	5.00
Carl Russell	1517½ Walnut, Artesia, Calif.	Awning Contractor	10	Optional	5.00
D. L. Severn	571 Maple, Bellflower, Calif.	Bookkeeper	10	Optional	5.00
J. K. Reeder	Bellflower, Calif.	Lawyer	10	Optional	5.00
E. R. Berberet	Long Beach, Calif.	Broker	10	Optional	5.00
H. A. Wallace	Long Beach, Calif.	Painter	10	Optional	5.00
R. W. Hendrix	Los Angeles, Calif.	Insurance	10	Optional	5.00
A. Reeder	Bellflower, Calif.	Housewife	10	Optional	5.00
Louise E. Gregory	Bellflower, Calif.	Musician	10	Optional	5.00
Art T. Maycock	Bellflower, Calif.	Contractor	10	Optional	5.00
John Dragoth	Los Angeles, Calif.	Contractor	10	Optional	5.00
Christine Brock	Bellflower, Calif.	Stenographer	10	Optional	5.00

[1] Indicates class of shares subscribed as "installment thrift," "optional savings," "prepaid," "full-paid income."

(For the files of the Federal Home Loan Bank Board)

Exhibit "B"

278 EXHIBIT

SUBSCRIPTIONS TO SHARES

LONG BEACH, CALIFORNIA, May 15th, 1934.

FEDERAL HOME LOAN BANK BOARD,
Washington, D. C.

DEAR SIRS: The undersigned hereby subscribe the number of shares of the par value of $100 each of the class indicated and contract to pay upon the grant of a

charter the amount of cash stated, as is indicated opposite their names signed hereto, in a Federal savings and loan association for which an application for permission to organize has been granted under Home Owners' Loan Act of 1933, providing for the organization of Federal savings and loan associations, and rules and regulations made thereunder, and hereby agree to take such shares and make such cash payment promptly upon the grant of a charter and the organization of such association and to cooperate and develop such an institution for the promotion of thrift and local home financing.

Name	Address	Occupation	Number of Shares	Class of Shares [1]	Cash to be Paid Upon Organization
Marion E. Compton	434 W. 6th St., Wilmington, Calif.	Housewife	10	Optional	$5.00
Mitt Milleson	434 W. 6th St., Wilmington, Calif.	Labor	10	Optional	5.00
Myrl F. Townsend	118 D. St., Wilmington, Calif.	Truck Driver	10	Optional	5.00
Alfons Sajonz	578 O'Farrell St., San Pedro, Calif.	Laundryman	10	Optional	5.00
Garrett Richards	500 W. F St., Wilmington, Calif.	Lumber Grader	10	Optional	5.00
W. L. Tennant	428 Lagoon, Wilmington, Calif.	Lumber Grader	10	Optional	5.00
Louis Tennant	428 Lagoon, Wilmington, Calif.	Wife	10	Optional	5.00
Jaunita Carmean	578½ O'Farrell, San Pedro, Calif.	Housewife	10	Optional	5.00
C. P. Rowley	Long Beach, Calif.	Salesman	10	Optional	5.00
J. W. Johnson	Bellflower, Calif.	Printer	10	Optional	5.00
E. M. Baxter	550 Grand Ave., Bellflower, Calif.	Boy Scouts	10	Optional	5.00
R. F. Tarlton	807 Oak, Bellflower, Calif.	Printer	10	Optional	5.00
T. E. Rand	541½ Walnut, Bellflower, Calif.	Printer	10	Optional	5.00
Joe D. Williams	Bellflower, Calif.	Publisher	10	Optional	5.00

[1] Indicates class of shares subscribed as "installment thrift," "optional savings," "prepaid," "full-paid income."

(For the files of the Federal Home Loan Bank Board)

279 EXHIBIT C

SUBSCRIPTIONS TO SHARES

LONG BEACH, CALIFORNIA, May 15th, 1934.

FEDERAL HOME LOAN BANK BOARD,
Washington, D. C.

DEAR SIRS: The undersigned hereby subscribe the numbers of shares of the par value of $100 each of the class indicated and contract to pay upon the grant of a charter the amount of cash stated, as is indicated opposite their

names signed hereto, in a Federal savings and loan association for which an application for permission to organize has been granted under Home Owners' Loan Act of 1933, providing for the organization of Federal savings and loan associations, and rules and regulations made thereunder, and hereby agree to take such shares and make such cash payment promptly upon the grant of a charter and the organization of such association and to cooperate and develop such an institution for the promotion of thrift and local home financing.

Name	Address	Occupation	Number of Shares	Class of Shares [1]	Cash to be Paid Upon Organization
E. W. Townsend	Wilmington, Calif.	Laundry Owner	10	Optional	$5.00
Grover C. Dodson	Long Beach, Calif.	Lawyer	10	Optional	5.00
Raymond Moore	Long Beach, Calif.	Mechanic	10	Optional	5.00
J. S. Watts	Long Beach, Calif.	Retired	10	Optional	5.00
Marie Watts	Long Beach, Calif.	Decorator	10	Optional	5.00
H. H. Law	Long Beach, Calif.	Ser. Station owner.	10	Optional	5.00
Vivian Law	Long Beach, Calif.	Press—Telegram.	10	Optional	5.00
Mattie Law	Long Beach, Calif.	Apt. House Mgr.	10	Optional	5.00
S. I. Bacon	Long Beach, Calif.	Wil. Trans. Co., Dept. Mgr.	10	Optional	5.00
Ruth Bacon	Long Beach, Calif.	Housewife	10	Optional	5.00
J. E. Gregory	Artesia, Calif.	Press. Bldg. Loan.	10	Optional	5.00
Frank B. Young	Long Beach, Calif.	Surgeon	10	Optional	5.00
Walter Jepson	Artesia, Calif.	Proctor-Gambel.	10	Optional	5.00
Arthur Jepson	Artesia, Calif.	Proctor-Gambel.	10	Optional	5.00
Joe E. Benson	Artesia, Calif.	Toolman	10 (TAG)	Optional	5.00
T. A. Gregory	Bellflower, Calif.	Bldg. Loan	250	Optional	$7,250

[1] Indicates class of shares subscribed as "installment thrift," "optional savings," "prepaid," "full-paid income."

(For the files of the Federal Home Loan Bank Board)

280 *Exhibit "C"*

PETITION FOR CHARTER

LONG BEACH, CALIFORNIA, May 21, 1934.

FEDERAL HOME LOAN BANK BOARD,
Washington, D. C.

DEAR SIRS: The undersigned respectfully petition for the grant of a charter to themselves, the associates, and successors, as a Federal savings and loan association, and show that:

1. Formal application for permission to organize such association was made and approved by W. F. Duffey,

President of the Federal Home Loan Board of Los Angeles.

2. The required number of subscribers have been obtained subscribing the amount in par value of shares required and agreed to pay in cash upon the grant of a charter the amount required and the original subscriptions to such shares are forwarded herewith to be returned to petitioners upon the grant of a charter.

3. Petitioners show that they have complied in all respects with Home Owners' Loan Act of 1933 and rules and regulations of the Federal Home Loan Bank Board for the organization of a Federal savings and loan association.

4. Petitioners further show that no expense has been incurred in connection with the formation of such association by them chargeable to the association and that no money has been collected and that no expense will be incurred or money collected by them prior to the grant of a charter and that an organization committee has been formed of which the undersigned petitioners are the duly elected officers and that they will serve as such officers until officers of the association are elected and that they will proceed to organize the said association upon the grant of a charter.

5. Petitioners, in good faith, desire to promote thrift and home ownership in their community by the accumulation of funds for home financing in accordance with the provisions of said act and the rules and regulations made thereunder.

6. Petitioners request the grant of a charter under the name and style of United Federal Savings and Loan Association of Long Beach, or such other name as to the Board may appear to be appropriate.

7. Wherefore, petitioners pray that they, their associates, and successors, be incorporated and made a body corporate under said name and style with all powers, privileges, and immunities, and subject to such conditions and restrictions as are provided in said act and rules and regulations made thereunder.

Name	Title	Address
T. A. Gregory	President	Bellflower, Calif.
S. Watts	Vice-Pres	Long Beach, Calif.
E. Gregory	Secretary	Bellflower, Calif.
K. Reeder	Director	Bellflower, Calif.
I. Bacon	Director	Long Beach, Calif.

281 *Exhibit "D"*

EXHIBIT E

CHARTER #426

Long Beach Federal Savings and Loan Association

Whereas T. A. Gregory, J. S. Watts, and J. E. Gregory have filed in proper form their petition for a charter for themselves, their associates and successors, as a Federal savings and loan association and after consideration of same by the Federal Home Loan Bank of Los Angeles, and upon all of the information before the Board it appears that said petition comes within the purview of the law and regulations made thereunder, therefore:

1. Said petitioners, their associates and successors are incorporated and granted this charter under the name and style of Long Beach Federal Savings and Loan Association to have and exercise all of the rights, privileges, and immunities, subject to such limitations and restrictions as are provided by law, to have perpetual succession until dissolved as is provided by law, and said association shall have full power to sue and be sued and to exercise the full powers of a corporation within the limits of the law.

2. The office of said association shall be at Long Beach in the county of Los Angeles, State of California.

3. The object of said association is to promote thrift and home ownership by providing a convenient and safe method for local citizens and others to save and invest money and by providing for the sound and economical financing of homes.

4. All shareholders of said association and all borrowers therefrom shall be deemed and held to be members thereof, and in all matters for action by the members each shareholder shall be permitted to cast 1 vote for each share held or subscribed but not exceeding 50 votes, and borrowing members shall be permitted to cast a vote whether they hold any shares or not. Voting may be by proxy, but no person shall cast by proxy more than 10 percent of the total vote eligible to be cast in the election.

5. Said association shall be under the direction of a board of directors of not less than 5 nor more than 15,

elected from the membership of the association. Directors shall be elected for periods of 3 years, but provision shall be made for the election of approximately one-third of said board each year. In the event of a vacancy the board of directors shall fill the vacancy for the unexpired term. Said board shall elect a president, one or more vice presidents, a treasurer, and a secretary, but one person may hold any two offices. Said officers shall be responsible for the management of the association under the direction of the board of directors.

6. The capital of the association shall be unlimited and shall consist of shares of the par value of $100 each, which may be issued as subscribed and which may be repurchased by the association as is herein provided, and retired. The shares shall be transferable only upon the books of the association, upon terms approved by the board of directors. The association is authorized to issue the following types of shares:

(a) Installment thrift shares

Installment thrift shares shall be issued as subscribed and shall be payable in monthly installments by the subscriber or his successors or assigns at the rate of one-half of 1 percent of the amount subscribed until the payments and the dividends credited thereon are equivalent to the par value of the shares subscribed.

(b) Optional savings shares

Optional savings shares shall be issued from time to time as subscribed, and payments shall be made thereon at the option of the subscriber, his successors or assigns until the payments and the dividends credited thereon are equivalent to the par value of the shares subscribed.

(c) Prepaid shares

Prepaid shares shall be issued as subscribed upon the payment by the subscriber of a lump sum and such shares shall be permitted to stand until the dividends declared and credited thereon pay the same up to their par value.

(d) Full-paid income shares

Full-paid income shares shall be issued as subscribed upon payment in full of the par value thereof by the subscriber.

(e) Preferred shares

Preferred shares shall be issued only to the Secretary of the Treasury of the United States for the benefit of the United States as subscribed and paid up by him.

7. On June 30 and December 31 of each year, after payment of all expenses or provision therefor, the board of directors shall credit to an undivided profits account an amount equivalent to one-half of 1 percentum of the total amount standing to the credit of installment thrift shareholders who have paid all installments on their accounts regularly without default for more than 60 days at any one time from the time the same were purchased by them or their predecessors in title and who have not requested the association to repurchase any part of such installment account. The board of directors may credit an additional amount to the undivided profits account sufficient to provide reasonable protection against contingencies over and above the provisions made in the reserve account for losses. Any sums necessary in the discretion of the board of directors may be taken from such undivided profits account provided that the same shall not be reduced below the amount required to pay the bonus herein provided for installment thrift shares. At each dividend date, before the declaration of a dividend, the board of directors shall transfer to the reserve account a credit equivalent to 5 percent of the earnings of the association, after provision for expenses, until said reserve account is equal to 5 percent of the total amount paid in on shares and if at any time said reserve account is below 5 percent of the amount paid in on shares, at least 5 percent of the earnings shall be transferred thereto before the declaration of any dividend, until said account is brought back to 5 percent of the total amount paid in on shares and said reserve account shall at all times be maintained for the purpose of absorbing any losses incurred by the association. After provision for all expenses and said undivided profits account as herein pro-

vided, and said reserve account as herein provided, the remainder of the profits for the period shall be declared and credited or paid on share accounts as a dividend, so that all shares in the association shall receive the same rate of earnings. In addition to the dividends herein provided, all installment thrift shareholders who pay their installment thrift share accounts from the date of subscription until the same become paid up, regularly without more than a 60-day default at any time and without the repurchase by the association of any part thereof, shall be paid a bonus in cash upon their shares becoming paid up, to be taken from said undivided profits account, equivalent to 1 percent per annum on the funds paid in by them on such installment thrift share accounts from the time the same are paid in until said installment thrift share accounts are paid up and such shareholders receive their cash bonus. All shareholders in said association shall have the same status as to assets of the same, except preferred shares, which have been issued to the Secretary of the Treasury of the United States for the benefit of the United States and which shares shall be preferred as to the assets of the association, and in case of liquidation such preferred shares shall be retired at par before any payments are made to any other shareholders.

8. No call shall be made on the Secretary of the Treasury to subscribe on behalf of the United States to preferred shares in said association unless other shareholders of the association have actually paid in in cash and unless there remains to the credit of such other shareholders a total sum equivalent to the total amount subscribed by the Secretary of the Treasury, including such call. Receipts shall be issued to the Secretary of the Treasury of the United States for payments made by him on subscriptions to preferred shares in the form as attached hereto, marked "Exhibit F" and hereby referred to and made a part of this paragraph, and such receipts shall be the evidence of the interest of the United States in such preferred shares to the extent of the amount so paid. Beginning 5 years from the time of the investment in such preferred shares by the Secretary of the Treasury, the association shall set aside one-third of its receipts from its investing and borrowing shareholders to be used

for the purpose of the retirement of such shares, and from time to time, at least semiannually, such funds so set aside shall be paid to the Secretary of the Treasury as a credit on or to take up the receipts issued.

9. When installment thrift shares, optional savings shares, or prepaid shares shall become paid up the same may remain in the association and shall be treated in all respects as full-paid income shares, or the same may be exchanged for full-paid income shares. All types of shares issued by the association, except preferred shares, shall be represented by a share account book containing a certificate of the shares subscribed, except that full-paid income shares may be represented by a separate share certificate or a share account book containing a certificate of the shares.

10. The association shall have the right to repurchase its shares and pay to the holders thereof the value of the same and shareholders shall have the right to file with the association their written application to repurchase their shares, in part or in full, at any time and upon the filing of such written application to repurchase, the association shall number and file the same in the order received and shall, after 30 days from the receipt of such application to repurchase, either pay the holder the value thereof, in part or in full as requested, or apply at least one-third of the receipts of the association from its shareholders and borrowers to the repurchase of such shares in numerical order. Provided, however, that the board of directors shall have an absolute right to repurchase not exceeding $100 of any one share account in any one month in any order regardless of whether such shareholder has filed an application for repurchase or not, and provided further, that if any shareholder applies for the repurchase of more than $1,000 of his share account or accounts, he shall be paid $1,000 in order when reached and his application shall be charged with such amount as paid and shall be renumbered and placed at the end of the list of applications to repurchase and thereafter upon again being reached, shall be paid a like amount, but not exceeding the value of his account, and until paid in full shall continue to be so paid, renumbered, and replaced at the end of the list until paid in full. Shareholders

filing written application for the repurchase of their shares shall remain shareholders until paid and shall not become creditors. Dividends upon the shares of any shareholders to the extent of the amount of the application to repurchase shall be discontinued while such shareholders remain upon a list to repurchase shares. In the event of the repurchase of any shares upon the application of a shareholder within 1 year of the date of
282 investment, the association shall retain a sum equal to one-half of the dividends declared on the amounts so repurchased, and in the event of the repurchase of any shares upon the application of a shareholder after 1 year but within 3 years of the date of the investment, the association shall retain a sum equal to one-fourth of the dividends declared on the amount so repurchased. On shares repurchased after 3 years from the date of investment the association shall pay the full amount paid in thereon, together with all dividends declared thereon up to and including the last dividend date but not exceeding the reasonable value thereof as determined by the board of directors. Upon the repurchase of shares, however, the association may determine, by vote of its shareholders, to charge a repurchase fee if any repurchase, withdrawal, membership, or like fee is allowed by the State law in the State in which the association is located, to be charged by building and loan, savings and loan, or similar associations, or cooperative banks, but no such fee shall be charged in excess of that allowed to be charged by such similar institutions under such State law, and in no case in excess of a sum equal to 2 percent of the par value of the shares subscribed, and in no case shall such fee or fees be charged to any one shareholder in excess of $25 except on full-paid income shares. If any repurchase fee is charged, the amount of the same shall be clearly indicated in each share certificate issued.

11. The association may lend its funds on the sole security of its shares and shall have a lien on such share account to secure such loan and in the event of a failure to pay such loan when due, the association may transfer funds from such share account in extinguishment of the debt, but loans on the sole security of shares shall not exceed 75 percent of the amount actually credited on such

shares. Such loans shall not be made, however, when the association has applications to repurchase remaining on file for more than 30 days. The association may lend its funds on the security of first liens upon homes, or combination home and business property within 50 miles of its home office; provided, that not more than $20,000 shall be loaned on the security of a first lien upon any such property; except that not exceeding 15 percent of the assets of such association may be loaned on other improved real estate without regard to the said $20,000 limitation, and without regard to said 50-mile limit, but secured by first lien thereon. Any portion of the assets of the association may be invested in obligations of the United States or in the stock or bonds of a Federal home loan bank. No loan shall be made to an officer, director, or employee upon the security of a first lien upon real estate except for the bona fide financing of the home of such officer, director, or employee. The association may invest an amount not exceeding the total amount of its undivided profits and reserve accounts in real estate for its home office or a home office and for rental. No loan shall be made upon the security of a lien upon real estate except after the written signed appraisal of at least two persons selected by the board of directors of the property upon which the loan is to be made. The association may lend not exceeding 75 percent of the value upon the security of a home or a combination home and business property and not exceeding 50 percent upon the security of other improved real estate.

12. Loans on real estate shall be made by the association repayable in monthly installments sufficient to amortize the same, paying off interest and principal in not less than 5 years nor more than 20 years. The association may take a note, bond, or other instrument, legally sufficient in the territory where it is operated, to represent the indebtedness of the borrower, which shall require a monthly payment sufficient to amortize the debt in said period and said payments shall be applied first to the interest on the unpaid balance of the debt and the remainder to the unpaid principal of the debt, until the same is paid in full. Instead of such direct reduction loan, the association may require the borrower to sub-

scribe an amount of shares equal to the amount of the loan and take a note, bond, or other instrument to mature upon the maturity of such account and require a monthly payment sufficient to pay all interest on the debt and estimated to mature said share account within the time specified, and in such case the association shall have a lien on such share account to secure the debt, and upon the maturity of the share account shall transfer the amount to the credit of the shares in extinguishment of the debt and cancel the security. The primary obligation shall be secured by a mortgage or other instrument constituting a first lien upon the premises securing the loan according to the best practices of the territory where the loan is made. Such loans may be paid off before maturity with interest not exceeding 90 days beyond the date of payment. It may make such charges for the use of its money or for the privilege of an advance or both as are permitted by special or general law of the State where it is located to be made by building and loan associations, savings and loan associations, cooperative banks, or similar institutions; such charges, however, shall not exceed those permitted under sections 4 and 5 of the Federal Home Loan Bank Act. Loans on the sole security of the shares may be made in such form as the board of directors may determine and at an interest rate legal within the State. The association shall ascertain the total charges paid by the borrower, other than for the use of the money or for the privilege of an advance, and shall make and keep a record of the same and shall also make and keep a record of expenses incurred by the association in connection with the making of loans.

13. The association shall be economically organized and operated and no expense shall be incurred except such as is customary in the operation of properly managed local thrift and home financing institutions, and no expense shall be incurred in respect to the sale of the shares of the association by way of salary, commission, or otherwise in excess of the repurchase fee of the association, if any. No sales contract shall be made to extend for more than 1 year or for the sale of more than $1,000,000 of shares, and all such contracts shall be subject to the approval of the Federal Home Loan Bank Board.

14. The association shall have power to borrow money, but shall not borrow exceeding an amount equal to 10 percent of the amount paid in on its shares except from a Federal home loan bank, and it may pledge any part of its assets to secure such borrowings. In no event shall the association borrow more than an amount equal to 35 percent of the amount paid in on its shares.

15. The association shall at all times be subject to the provisions of the Home Owners' Loan Act of 1933, providing for Federal savings and loan associations, and to any amendments thereof, and to any valid rules and regulations made thereunder as the same may be amended from time to time.

16. The association shall not accept deposits in any form or use certificates of indebtedness of any kind except for borrowed money as herein provided, and shall not represent itself as a deposit institution; and payments made on shares shall be called share payments. The profits of shareholders shall be termed dividends and shall not be referred to as interest. All shares shall be nonassessable and shareholders shall not be responsible for any losses incurred by the association in any way beyond the loss of the funds actually paid in plus dividends credited thereto.

17. Minors, married women, and corporations may buy and hold shares in the association and it may repurchase their shares as other shares, thereby relieving itself of responsibility, provided such action is not in conflict with existing law. Two or more persons may hold shares in the association jointly or by joint and survivorship title unless prohibited by law.

18. The association shall have power to do such other things as may be incidental to or necessary for the accomplishment of the purposes of its incorporation as herein provided.

19. The bylaws adopted by the association shall provide for the management of the association within the provisions of the law and this charter and the rules and regulations of the Federal Home Loan Bank Board.

20. The association may be liquidated, merged, consolidated, or reorganized, as is provided in the rules and regulations for Federal savings and loan associations made by the Federal Home Loan Bank Board.

21. This charter, by a certified copy thereof under the seal of the Federal Home Loan Bank Board, shall be accepted as evidence of the corporate existence of said association.

I, ———, secretary of the Federal Home Loan Bank Board, do hereby certify that the foregoing is a true and correct copy of the charter of the ——— Federal Savings and Loan Association of ———, and that said association was incorporated and said charter granted by the Federal Home Loan Bank Board, a quorum being present on the ——— day of ———, 193—.

This the ——— day of ———, 193—.

———,

(Secretary).

EXHIBIT F

——— Federal Savings and Loan Association of ———

Received by the ——— Federal Savings and Loan Association of ——— from the Secretary of the Treasury of the United States of America, the sum of ——— dollars for payment on account of subscriptions by the United States of America to ——— shares of the preferred stock of the ——— Federal Savings and Loan Association of ———, as provided by the terms of the act of Congress entitled "Home Owners' Loan Act of 1933", approved June 13, 1933.

"Section 5 (g). The Secretary of the Treasury is authorized on behalf of the United States to subscribe for preferred shares in such associations which shall be preferred as to the assets of the association and which shall be entitled to a dividend, if earned, after payment of expenses and provision for reasonable reserves, to the same extent as other shareholders. It shall be the duty of the Secretary of the Treasury to subscribe for such preferred shares upon the request of the Board; but the subscription by him to the shares of any one association shall not exceed $100,000, and no such subscription shall be called for unless, in the judgment of the Board, the funds are necessary for the encouragement of local home financing in the community to be served and for the reasonable financing of homes in such community. Payment on such shares may be called from time to time by

the association, subject to the approval of the Board and the Secretary of the Treasury; but the amount paid in by the Secretary of the Treasury shall at no time exceed the amount paid in by all other shareholders, and the aggregate amount of shares held by the Secretary of the Treasury shall not exceed at any time the aggregate amount of shares held by all other shareholders * * *."

In witness whereof the ——— Federal Savings and Loan Association of ——— has caused this receipt to be signed in its name by its ——— and its corporate seal to be hereunto affixed, and to be attested to by its secretary, this ——— day of ———, A.D. 193——.

——— Federal Savings and Loan Association of ———

[SEAL] By ——— ———,
(*President*).

Attested ——— ———,
(*Secretary*)

The above receipt has been approved by the Federal Home Loan Bank Board, and the Secretary of the Treasury is requested to subscribe accordingly.

FEDERAL HOME LOAN BANK BOARD,

By .....
(*Secretary*).

283 *Exhibit "E"*

PETITION FOR AMENDED CHARTER—Exhibit K

FEDERAL HOME LOAN BANK BOARD,
Washington, D. C.

The undersigned, pursuant to Section 9 of the Rules and Regulations for Federal Savings and Loan Associations, respectfully petitions the Board to issue an amended charter in the form of Exhibit K to the undersigned, prescribing the present name and 328 American Avenue, in the City of Long Beach, County of Los Angeles, State of California, as the new home office.

The undersigned, by its secretary, hereby certifies that the members at a regular annual meeting duly adopted the following resolution:

"Be it resolved, That the present charter of this association be amended to read in the form of Exhibit K of the Rules and Regulations for Federal Savings and Loan

Associations effective December 1, 1936, prescribing the present name and 328 American Avenue, in the City of Long Beach, County of Los Angeles, State of California, as the new home office".

In witness whereof, the Secretary of the undersigned has hereunto affixed his hand and the seal of the undersigned this 20th day of January, 1937.

[CORPORATE SEAL] LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,
By J. E. GREGORY,
Secretary.

284 *Exhibit "F"*

CHARTER NUMBER 426

EXHIBIT K

Pursuant to the provisions of section 5 of the Home Owners' Loan Act of 1933, the Federal Home Loan Bank Board hereby issues the following charter:

1. Name.—The name of the Federal savings and loan association hereby chartered (hereinafter referred to as the "association") is "Long Beach Federal Savings and Loan Association".

2. Office.—The home office of the association shall be located at Long Beach, in the County of Los Angeles, State of California. No office of the association shall be moved from its immediate vicinity except as may be provided in regulations made by the Federal Home Loan Bank Board.

3. Objects and powers.—The objects of the association are to promote thrift by providing a convenient and safe method for people to save and invest money and to provide for the sound and economical financing of homes. The statute, this charter, and rules and regulations made thereunder provide for examination and supervision and at the same time for the protection of all private rights concerned, and shall be construed in keeping with the best practices of local mutual thrift and home-financing institutions in the United States.

The association shall act as fiscal agent of the Government when designated for that purpose by the Secretary

of the Treasury, under such regulations as he may prescribe, and shall perform all such reasonable duties as fiscal agent of the Government as he may require. The association may act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality.

The association shall have perpetual succession and power to sue and be sued, complain and defend in any court of law or equity; to have a corporate seal, affixed by imprint, facsimile or otherwise; to appoint officers and agents as its business shall require, and allow them suitable compensation; to have bylaws not inconsistent with the Constitution or laws of the United States, this charter, and rules and regulations of the Federal Home Loan Bank Board, providing for the management of its property and regulation and government of its affairs; to wind up and dissolve, merge, consolidate, or reorganize in the manner provided by law and rules and regulations made thereunder; and to conduct business in the territory of the United States except as otherwise limited in this charter. The association may purchase, hold and convey real and personal estate consistent with its objects, purposes, and powers; may mortgage or lease any real and personal estate; and may take such property by gift, devise, or bequest. Unless authorized by the Federal Home Loan Bank Board, the association may not invest in an office building or buildings for the transaction of the business of the association an amount representing the cost of land and buildings in excess of the sum of its undivided profits and reserve accounts.

In addition to the foregoing powers expressly enumerated, the association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers. The association shall have such powers as are conferred by law and shall exercise its powers in conformity with the Home Owners' Loan Act of 1933 and all laws of the United States as they now are, or as they may hereafter be amended, and with the rules and regulations made thereunder which are not in conflict with this charter.

4. Members.—All holders of share accounts of the association and all borrowers therefrom shall be deemed and

held to be members thereof. In the consideration of all questions requiring action by the members, each holder of a share account shall be permitted to cast one vote for each $100, or fraction thereof, of the participation value of his share account. A borrowing member shall be permitted, as a borrower, to cast one vote, and to cast the number of votes to which he may be entitled as the holder of a share account. No member, however, shall cast more than 50 votes. Voting may be by proxy. Any number of members present at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of members shall determine any question. The members who shall be entitled to vote at any meeting of the members shall be those owning share accounts and borrowing members of record on the books of the association at the end of the calendar month next preceding the date of the meeting of members.

5. Directors and officers.—The association shall be under the direction of a board of directors of not less than 5 nor more than 15, as determined and elected by the members. Directors shall be elected by ballot from the membership of the association, and a director shall cease to be a director when he ceases to be a member. At the first meeting of members of the association, directors shall be elected to serve until the first annual meeting and until their successors are duly elected and qualified. Thereafter directors shall be elected for periods of 3 years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board of directors each year. In the event of a vacancy, including vacancies created by an increase by vote of the members of the number of directors within the limits hereinabove specified, the board of directors may fill the vacancy, if the members fail so to do, by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term. At its meeting, which shall be held as soon as practicable after the annual meeting of members, the board of directors shall elect a president, one or more vice presidents, a secretary, and a treasurer. It may appoint such additional officers and employees as it may from time to time determine. The

offices of secretary and treasurer may be held by the same person, and a vice president may also be either the secretary or the treasurer. The term of office of all officers shall be 1 year or until their respective successors are elected and qualified; but any officer may be removed at any time by the board of directors. In the absence of designation from time to time of powers and duties by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

6. Share capital.—The share capital of the association shall consist of the aggregate of payments upon share accounts and dividends credited thereto less redemption and repurchase payments. The participation value in the share capital of each share account held by a member shall be the aggregate of payments upon such share account and dividends credited thereto less redemption and repurchase payments. Share accounts of $100 or multiples thereof may be known as investment share accounts, consisting of full-paid income shares. All other share accounts shall be known as savings share accounts. Payments upon share accounts shall be called share payments. Outstanding share accounts, if any, created pursuant to a previous charter of the association issued by the Federal Home Loan Bank Board shall continue to be known and treated as provided in the Federal charter in effect at the time each such share account was created, until exchanged for investment or savings share accounts. Share accounts may be issued for cash, or property in which the association is authorized to invest, and, in the absence of actual fraud in the transaction, the value of property taken in payment therefor, as determined by the board of directors, shall be conclusive. All share accounts shall be nonassessable, and no holder thereof shall be responsible for any losses incurred by the association beyond the loss of the participation value of his share accounts at the time the loss is determined.

7. Ownership of share accounts.—All share accounts shall be represented by share account books containing a certificate of membership and evidencing the participation value of the share account, except that investment share accounts may be represented by separate membership certificates. Share accounts may be purchased and held

absolutely by, or in trust for, any person, including an individual, male, female, adult or minor, single or married, a partnership, association, and corporation. The receipt or acquittance of any member, including a minor person or a married woman, who holds a share account shall be a valid and sufficient release and discharge of the association for any payment to such person on any share account. Two or more persons may hold share accounts jointly in any manner permitted by law. Trustees and other fiduciaries, including, but not limited to, fiduciaries empowered to invest in first mortgages, may invest in share accounts. Share accounts shall be transferable only upon the books of the association and upon proper application by the transferee and the acceptance of the transferee as a member upon terms approved by the board of directors. The association may treat the holder of record of share accounts as the owner for all purposes without being affected by any notice to the contrary unless the association has acknowledged in writing notice of a pledge. The association shall not directly or indirectly charge any membership, admission, repurchase, withdrawal, or any other fee or sum of money, for the privilege of becoming, remaining, or ceasing to be a member of the association.

8. Power to obtain advances.—The association shall have power to obtain advances of not more than an amount equal to one-half of its share capital on the date of the advance. A subsequent reduction of share capital shall not affect in any way outstanding obligations for advances. The association shall not have power to obtain advances from any source other than a Federal home loan bank of more than an amount equal to 10 percent of its share capital on the date of the advance. The association may pledge or otherwise encumber any of its assets to secure its debts. The association shall not accept deposits from the public or issue any evidence of indebtedness except for advances. It shall not represent itself as a deposit institution.

285 9. Reserves, undivided profits, and dividends.—As of June 30 and December 31 of each year, after payment or provision for payment of all expenses and appropriate transfers to the reserve required below, and additional transfers to other reserve accounts, and pro-

vision for an undivided profits account, the board of directors shall declare as dividends the remainder of the net earnings of the association for the 6 months' period. All dividends shall be declared as of said dividend dates. The board of directors may declare dividends as of said dividend dates payable out of the amounts remaining from previous periods in the undivided profits account. Profits to holders of share accounts shall be termed dividends (except bonus payments) and shall not be referred to as interest. The association shall maintain the reserve required for insurance of accounts by sufficient credits on each dividend date. If and whenever the aggregate reserves of the association (less reserve for bonus) are not equal to 10 percent of the share capital, the association shall, at each dividend date, transfer to reserves (other than reserve for bonus) a credit equivalent to at least 5 percent of the net earnings of the association, until such aggregate reserves are equal to 10 percent of the share capital. Any losses may be charged against reserves. Dividends upon investment share accounts shall be promptly paid in cash as of the dividend date. Dividends on savings share accounts shall be credited to such share accounts on the books of the association as of the dividend date. All holders of share accounts shall participate equally in dividends pro rata to the participation value of their share accounts; provided that the association shall not be required to credit dividends on inactive share accounts of $5 or less. Except as provided above, dividends shall be declared on the participation value of each share account at the beginning of the dividend period, plus the share payments made during the dividend period (less amounts repurchased and noticed for repurchase and, for dividend purposes, deducted from the latest previous share payments), computed at the dividend rate for the time invested, determined as provided below. The date of investment shall be the date of actual receipt of such share payments by the association, unless the board of directors fix a date, not later than the tenth of the month, for determining the date of investment of payments on either investment or savings share accounts or on both types of share accounts. Share payments affected by such determination

date, received by the association on or before such determination date, shall receive dividends as if invested on the first of such month. Share payments, affected by such determination date, received subsequent to such determination date, shall receive dividends as if invested on the first of the next succeeding month. All holders of share accounts shall be entitled to equal distribution of net assets, pro rata to the value of their share accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association.

10. Bonus and bonus reserve.—In order to stimulate systematic thrift and to provide regular funds for the financing of homes, the members, by bylaw provision, may obligate the association to pay a cash bonus as follows:

(a) Short-term bonus.—If, after the adoption of the bonus plan, a member desiring a short-term bonus shall agree to make regular monthly share payments of any specified amount on a savings share account until the participation value thereof shall equal 100 times the agreed monthly payment, and if the agreed monthly payments shall be made each and every month thereafter until the participation value thereof shall equal 100 times the agreed monthly payment, without a delay of more than 60 days in the payment of any monthly payment and without any prepayment of more than 12 months, and if during such period no application has been made for repurchase of any part of such savings share account, the bonus shall be payable on the date on which the participation value of such savings share account shall equal or exceed 100 times the agreed monthly payment. The bonus rate on such short-term savings share account shall be one-half of 1 percent per annum and the amount of the bonus shall be determined as follows: Divide the dollar amount of each semiannual dividend declared on such savings share account by a figure equal to twice the annual rate of percent of such semiannual dividend declared. The amount of the bonus is the sum of the quotients obtained.

(b) Long-term bonus.—If, after the adoption of the bonus plan a member desiring a long-term bonus shall agree to make regular monthly share payments of any

specified amount on a savings share account until the participation value thereof shall equal 200 times the agreed monthly payment, and if the agreed monthly payments shall be made each and every month thereafter until the participation value thereof shall equal 200 times the agreed monthly payment, without a delay of more than 60 days in the payment of any monthly payment and without any prepayment of more than 12 months, and if during such period no application has been made for repurchase of any part of such savings share account, the bonus shall be payable on the date on which the participation value of such savings share account shall equal or exceed 200 times the agreed monthly payment. The bonus rate on such long-term savings share account shall be 1 percent per annum and the amount of the bonus shall be determined as follows: Divide the dollar amount of each semiannual dividend declared on such savings share account by a figure equal to the annual rate of percent of such semiannual dividend declared. The amount of the bonus is the sum of the quotients obtained.

The members, by amendment of the bylaws, may abolish the bonus plan as to savings share accounts opened after the date of such repeal of the bonus plan.

Simultaneously with the declaration of each semiannual dividend after the adoption of the bonus plan, the board of directors shall transfer out of net earnings to an account designated "reserve for bonus" an amount, which, together with existing credits to such reserve, is sufficient to pay the bonus on all savings share accounts then entitled to participation in such reserve in accordance with the provisions of this section. The board of directors may transfer any excess in such reserve to the undivided profits account.

11. Redemption.—At any time funds are on hand for the purpose, the association shall have the right to redeem by lot, or otherwise as the board of directors may determine, all or any part of any of its share accounts on a dividend date, by giving 30 days' notice by registered mail addressed to the holders at their last address recorded on the books of the association. The association shall not redeem any of its share accounts when there is an impairment of share capital or when it has applica-

tions for repurchase which have been on file more than 30 days and not reached for payment. The redemption price of share accounts redeemed shall be the full value of the share account redeemed, as determined by the board of directors, but in no event shall the redemption price be less than the repurchase value. If a share account which is redeemed is entitled to participate in the reserve for bonus, the amount of such accrued participation shall be paid as part of the redemption price. If the aforesaid notice of redemption shall have been duly given, and if on or before the redemption date the funds necessary for such redemption shall have been set aside so as to be and continue to be available therefor, dividends upon the share accounts called for redemption shall cease to accrue from and after the dividend date specified as the redemption date, and all rights with respect to such share accounts shall forthwith, after such redemption date, terminate, except only the right of the holder of record to receive the redemption price without interest.

12. Repurchase.—The association shall have the right to repurchase its share accounts at any time upon application therefor and to pay to the holders thereof the repurchase value thereof. Holders of share accounts shall have the right to file with the association their written applications to repurchase their share accounts, in part or in full, at any time. Upon the filing of such written applications to repurchase, the association shall number and file the same in the order received and shall either pay the holder the repurchase value of the share account, in part or in full as requested, or, after 30 days from the receipt of such application to repurchase, apply at least one-third of the receipts of the association from holders of share accounts and borrowers, to the repurchase of such share accounts in numerical order; provided, that if any holder of a share account applies for the repurchase of more than $1,000 of his share account or accounts, he shall be paid $1,000 in order when reached, and his application shall be charged with such amount as paid and shall be renumbered and placed at the end of the list of applications to repurchase, and thereafter, upon again being reached, shall be paid a like amount, but not

exceeding the value of his account, and until paid in full shall continue to be so paid, renumbered, and replaced at the end of the list. When an application to repurchase is reached for payment as above provided, a written notice shall be sent to the applicant by registered mail at his last address recorded on the books of the association, and, unless the applicant shall apply in person or in writing for such repurchase payment within 30 days from the date of mailing such notice, no payment on account of such application shall be made and such application shall be cancelled. The board of directors shall have the absolute right to repurchase not exceeding $100 of any one share account or accounts of any one holder in any one month in any order regardless of whether or not such holder has filed an application for repurchase. Holders of share accounts filing written application for repurchase shall remain holders of share accounts until paid and shall not become creditors. Dividends upon a share account, to the extent of the amount of the application to repurchase all or part thereof, shall be discontinued while such share account remains upon the repurchase list. The repurchase value of share accounts of the association shall be the participation value thereof.

13. Loans and investments.—The association may make loans to holders of share accounts on the sole security of their share accounts. To secure such loans the association shall obtain a lien upon, or a pledge of, the share account. Upon any default on any such loan, the association may, without any notice to or consent of the share account holder, cancel on its books share accounts pledged and apply such share accounts in payment on account of the loan. No such loan shall exceed 90 percent of the repurchase value of the share account securing such loan. No such loan shall be made when the association has applications for repurchase which have been on file more than 30 days and not reached for payment.

The association may also lend its funds on the security of first liens upon homes, or combination of homes and business property, within 50 miles of its home office; provided, that not more than $20,000 shall be loaned on the security of a first lien upon any property; except that not exceeding 15 percent of the assets of the associa-

tion may be loaned on other improved real estate without regard to said $20,000 limitation, and without regard to said 50-mile limit, but secured by first lien thereon; and, provided further, that the association may lend, without the requirement of amortization of principal, not exceeding 50 percent of the appraised value of the security of a first lien upon improved real estate; but the aggregate amount of such loans and of all other loans made pursuant to this sentence, without regard to the $20,000 limitation and without regard to the 50-mile limit, shall not exceed 15 percent of the assets of the association, without the prior written approval of the Federal Home Loan Bank Board. The association, if converted from a State-chartered institution, may continue to make loans in the territory in which it made loans while operating under State charter. The association shall not make any loans to an officer, director, or employee, except loans on the sole security of share accounts owned by such officer, director, or employee, and except loans on the security of a first lien upon the home or combination of home and business property owned and occupied by such borrowing officer, director, or employee. The association may lend an amount not exceeding 75 percent of the value of the security of a home or combination home and business property, and may lend an amount not exceeding 50 percent of the value of the security of other improved real estate, provided that the association may lend a higher percentage of the value of any such security when authorized by the members of the association and by regulations made by the Federal Home Loan Bank Board.

The association may invest without limit in obligations of, or obligations guaranteed as to principal and interest by, the United States, in obligations of Federal home loan banks, and in other securities approved by the Federal Home Loan Bank Board. The association may also invest in stock of a Federal home loan bank.

No loan shall be made upon the security of real estate until at least two qualified persons selected by the board of directors shall have submitted a signed appraisal of the real-estate security for such loan. No loan shall be made when the borrower is required to pay to the associa-

tion or to another person in connection with the loan any unreasonable or unlawful charge or fee. The association shall ascertain the total amount paid by each borrower, to it and to any other person in connection with the loan, and furnish to each borrower upon the closing of the loan a loan settlement statement, indicating in detail the charges or fees such borrower has paid or obligated himself to pay to the association or to any other person in connection with such loan, and a copy of such statement shall be retained in the records of the association.

14. Loan plan.—Loans on real estate shall be made on one of the following bases:

(a) Repayable in monthly installments, equal or unequal, beginning not later than 30 days after the date of the advance of the loan, sufficient to retire the debt, interest and principal, within 20 years; provided, however, that the loan contract shall not provide for any subsequent monthly installment of an amount larger than any previous monthly installment; and provided further, that in the case of construction loans the first payment shall not be later than 4 months after the date of the first advance.

(b) To the extent permitted by this charter, repayable within 5 years from date with or without any amortization of principal but with interest payable at least semi-annually.

The monthly payments required shall be applied first to interest on the unpaid balance of the debt and the remainder to the reduction of the debt until the same is paid in full. The primary obligation shall be secured by a mortgage or other instrument constituting a first lien or the full equivalent thereof upon the real estate securing the loan according to any lawful and well recognized practice which is deemed best suited to the transaction. In keeping with the best loan practices in the territory, the instrument securing a loan on real estate shall provide for full protection to the association and shall be recorded. It shall provide specifically for full protection with respect to insurance, taxes, assessments, other governmental levies, maintenance, and repairs. It may provide for an assignment of rents and for such other protection as may be lawful or appropriate. The association

may pay taxes, assessments, insurance premiums, and other similar charges for the protection of its interest in the property on which it has loans. All such payments may, when lawful, be added to the unpaid balance of the loan. The association may require life insurance to be assigned to the association by its borrowers as additional collateral for real-estate loans. The association may advance premiums on any life insurance held as additional collateral for real-estate loans if the association has a first lien on the policy. Such premium advances may, when lawful, be added to the unpaid balance of the loan. The association may require that the equivalent of one-twelfth of the estimated annual taxes, assessments, insurance premiums, and other charges upon real-estate security, or any of them, be paid in advance to the association in addition to interest and principal payments on its loans so as to enable the association to pay such charges as they become due from the funds so received. The association shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estate on which the association has made loans or which is owned by the association. The board of directors shall from time to time determine the rate of interest, premiums, fees, and other charges to be made in connection with loans by the association. In fixing such charges full consideration shall be given to sound and economical home financing in the territory in which the association operates. Borrowers shall have the right to prepay their loans without penalty; except that when the amount prepaid equals or exceeds 20 percent of the original principal amount of the loan, not more than 90 days' interest on the amount prepaid may be charged, provided the loan contract makes provision for such penalty. All loans on the security of real estate shall be made in accordance with this section unless the Federal Home Loan Bank Board approves another loan plan upon application from the association for such approval.

15. Evidence of corporate existence.—This charter, or a certified copy hereof under the seal of the Federal Home Loan Bank Board, shall be evidence of the corporate existence of the association.

16. Amendment of charter.—No amendment, addition,

alteration, change, or repeal of this charter shall be made unless such proposal is made by the board of directors of the association, and submitted to and approved by the Federal Home Loan Bank Board, and is thereafter submitted to and approved by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective, if filed with and approved by the Federal Home Loan Bank Board, as of the date of the final approval by the members.

I, ———, Secretary of the Federal Home Loan Bank Board, do hereby certify that the foregoing is a true and correct copy of the charter of the ——— Federal Savings and Loan Association ——— issued by the Federal Home Loan Bank Board, a quorum being present, on the ——— day of ———, 19——.

This, the ——— day of ———, 19——.

[SEAL]

———

Secretary.

287 *Exhibit "G"*

FEDERAL HOME LOAN BANK ADMINISTRATION
Order No. 3263. Date December 13, 1944.

Approval of the Federal Home Loan Bank Administration is hereby given to the amendment of Section 4, relating to voting rights of members, to the amendments of paragraph (a) and the first subparagraph of paragraph (b) of Section 10, relating to bonus and bonus reserve, and to the amendment inserting a new Section 14.1 relating to additional lending powers, between Sections 14 and 15 of the Charter of the Long Beach Federal Savings and Loan Association, Long Beach, California, repealing the last sentence of Section 4 and adding in lieu thereof the additional provisions set forth in subparagraph 4 of paragraph (d) of Section 202.9 of the Rules and Regulations for the Federal Savings and Loan System, adding to Section 10, paragraph (a), and the first subparagraph of paragraph (b), respectively, additional provisions in the form set forth in subparagraphs 1 and 2, respectively, of paragraph (d) of said Section 202.9, and inserting between Sections 14 and 15 the provisions in the form

set forth in subparagraph 3 of paragraph (d) of said Section 202.9; this approval to be effective as of November 7, 1944, the date of final approval by the members.

A certified copy of this order shall be attached to the Charter of said association in the files of this Administration and to the certified copy of such Charter in the possession of the association; and, in the event of the recording of such Charter in any public records, a certified copy of this order shall be presented by the association for incorporation in said records.

Received copy of the within Affidavit this 28th day of June, 1946.

H. O. WALLACE,
of THOMAS AND WALLACE,
Attorney for defendant Title Service Co.
WESTOVER & SMITH,
by WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

288 In United States District Court

[Title omitted.]

Minute order
July 1, 1946

This cause coming on for setting for hearing on (1) plaintiff's motion for a preliminary injunction and to take testimony and evidence at the hearing thereof, (2) motion of defendant Long Beach Federal Savings and Loan Association for a preliminary injunction on oral testimony, (3) motion of A. V. Ammann, individually, and as Conservator for the Long Beach Federal Savings and Loan Association, to dismiss, and (4) motion of the plaintiffs for a preliminary injunction to restrain the holding of an administrative hearing; Messrs Westover and Smith by Wyckoff Westover, Esq., appearing as counsel for the plaintiff; Messrs Thomas and Wallace by H. O. Wallace, Esq., appearing as attorneys for the Title Service Co.; Raymond Tremaine, Esq., appearing as attorney for defendant and cross-complainant R. H. Wallis; Chas. K. Chapman, Esq., appearing as attorney for Long Beach Federal Savings & Loan Association; James M. Carter,

U. S. Attorney, by Ronald Walker, Assistant U. S. Attorney, appearing as attorney for defendant A. V. Ammann, individually, and as Conservator for the Long Beach Federal Savings & Loan Association; F. Henry NeCasek, Esq., appearing in behalf of the Home Investment Co. of Long Beach:

Attorney NeCasek moves and presents a written motion ex parte to file a complaint in intervention for the ultimate purpose of securing an order of this Court for the reconveyance of 174 trust deeds now in the custody of the Clerk of this Court, deposited there by the Trustee, Title Service Co., a party defendant herein, said 289 trust deeds involving approximately $850,000. and there being no objections to said motion by counsel for the Title Service Co., defendant and cross-complainant R. H. Wallis; Long Beach Federal Savings and Loan Association, A. V. Ammann, individually and as Conservator, etc., and the plaintiffs herein, the Court thereupon orders said motion granted and that the Complaint in Intervention be filed.

Attorney NeCasek now orally petitions the Court and presents a written petition pursuant thereto for an Order to Show Cause on defendants Amman as Conservator and the Title Service Co. why they should not issue reconveyances on the trust deeds now on deposit with the Clerk of this Court to which motion counsel for all parties state that such a petition should be adjudicated by a three judge court; whereupon, Attorney NeCasek advises the Court that the money in lieu of said trust deeds is available for depositing. Attorney Wallace informs the Court that if counsel for the Conservator will stipulate to reconveyance he will so instruct the Title Service Co. to issue same. The Court declines to make a ruling on the petition for an Order to Show Cause at this time and orders further hearing herein continued hereby to 3 P.M. today.

At 4:15 P.M. court reconvenes herein and all being present as before, the Court and counsel discuss the issues herein to be heard before a three judge court and it appearing that Albert Lee Stephens, Circuit Judge, Peirson M. Hall and Dave W. Ling, District Judges, will be the three judges to hear the question.

The Court, and counsel agreeing, orders hearing on the

plaintiffs' Preliminary Injunction, motion of the Long Beach Federal Savings and Loan Association for a preliminary injunction, motion of Ammann to dismiss, and motion of Defendant Fahey to quash service, notice of filing of such a motion is not waived by counsel for the plaintiffs.

Attorney Chapman presents a petition for bringing in third party defendants and there being no objections thereto, said petition is ordered granted and a third party complaint is ordered filed and that summons issue as requested. Counsel for all parties, except counsel for Ammann Conservator, join in said third party complaint.

Attorney Westover presents a motion for a preliminary injunction to restrain the holding of an administrative hearing in which motion all counsel join except counsel for Conservator Ammann, and which motion is ordered granted over objections of counsel for Defendant Ammann, said preliminary injunction to expire 6 P.M., July 15, 1946.

Now, the Court considers the petition of Attorney NeCasek for an Order to Show Cause which is ordered granted and that service of a true copy be made upon Mr. Fahey by noon, tomorrow, July 2, 1946, said service to be air-mailed and registered to Mr. Fahey at 101 Indiana Ave., Washington, D. C.

At 6:30 P.M. court recesses in the trial of this cause.

291 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion to bring in third party defendants
Filed July 1, 1946

Defendant Long Beach Federal Savings and Loan Association moves for leave to make Federal Home Loan Bank of Los Angeles, Federal Home Loan Bank of Portland, Federal Home Loan Bank of San Francisco, all organizations organized and existing under and by virtue of the laws of the United States of America, parties to this action, and that there be served upon them, and each of

them, Summons and Third Party Complaint as set forth in the Exhibits "B" and "C" hereto attached.

Dated: June 28th, 1946.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant, Long Beach Federal Savings and Loan Association, Ocean Center Building, Long Beach 2, California.

292 (Exhibit "B" is a copy of summons for third party complaint which appears at page 342 of the certified transcript so is not included at this point to avoid duplicity.)

(Exhibit "C" is a copy of third party complaint (for return of property, accounting and for declaratory relief) and exhibit "A" thereto (third party complaint, for return of property, for injunction and for declaratory relief, and for account.) Which appear at pages 346 et seq of the certified transcript so are not included at this point to avoid duplicity.)

293 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order bringing in third party defendants
Filed July 1, 1946

The motion and application of defendant Long Beach Federal Savings and Loan Association for an order bringing in as Third Party Defendants, Federal Home Loan Bank of Los Angeles, Federal Home Loan Bank of Portland, Federal Home Loan Bank of San Francisco, having been considered, the Court grants such motion and application and finds that said third party defendants, and each and all of them, are necessary and proper parties to the complete and final determination of the above action.

It is therefore ordered, adjudged, and decreed that defendant Long Beach Federal Savings and Loan Association is granted leave to file and serve its Third Party Complaint, Exhibit "C" of said Motion, and the Clerk of

this Court is ordered to issue a Summons in the form set forth in said Motion as Exhibit "B," and Federal Home Loan Bank of Los Angeles, Federal Home Loan
294 Bank of Portland, Federal Home Loan Bank of San Francisco, all organizations organized and existing under and by virtue of the laws of the United States are hereby made Third Party Defendants in the above entitled action.

Done in open Court this 1st day of June 1946.

PEIRSON M. HALL,
Judge of the United States District Court.

295 In the District Court of the United States

Answer to: (1) plaintiff's complaint; (2) cross-claim in interpleader of defendant Title Service Company; (3) cross-claim in interpleader of defendant Robert H. Wallis, and cross-claim of defendant Long Beach Federal Savings and Loan Association

Filed July 1, 1946

296 Defendant, Long Beach Federal Savings and Loan Association, an Association, organized and existing under the laws of the United States of America, severing from its co-defendants and answering for itself alone, admits, denies and alleges as follows:

I

Answering Paragraph VII of plaintiff's Complaint, defendant Long Beach Federal Savings and Loan Association admits all of the allegations in said Paragraph contained, except that said other defendants, John H. Fahey, A. V. Ammann, et al. on or about the 23rd day of May, 1946, caused to be delivered to certain officers of defendant Long Beach Federal Savings and Loan Association a document entitled "Federal Home Loan Bank Administration Order No. 5254", copy of which order is attached to this answer as Exhibit "B" and incorporated herein by reference and made a part hereof as if set forth herein at length. That said purported order contained no allegations of any specific facts what-

soever. Neither did it set forth any misconduct, errors, omissions or wrongful acts, as charged to said defendant Long Beach Federal Savings and Loan Association by the said Federal Home Loan Bank Administration.

II

Answering Paragraph VIII of plaintiffs' Complaint, defendant Long Beach Federal Savings and Loan Association admits the allegations contained in said paragraph and in this connection alleges that said association was, and at all times has been, completely and fully solvent and able to pay all of its obligations, and in addition thereto, had a substantial surplus, reserves, etc. of approximately One Million Three Hundred Thousand Dollars ($1,300,000.00). That said defendants, John H. Fahey and A. V. Ammann, have never at any time asserted that said association was insolvent, but on the contrary, have admitted and repeatedly affirmed and stated both to the general public and to the members and creditors of said association, that it was fully able to pay all of its obligations in cash at any time upon demand. Notwithstanding which, said association was, without any notice or opportunity whatsoever to said association to correct any defects or to change any of its methods arbitrarily and summarily without notice seized from the possession of defendant Long Beach Federal Savings and Loan Association, its officers and management, by said other defendants.

III

Answering Paragraph IX of plaintiffs' Complaint, defendant Long Beach Federal Savings and Loan Association admits all of the allegations in said paragraph contained and in this connection alleges that defendants, John H. Fahey and A. V. Ammann, as part of the scheme for the seizure of the Federal Home Loan Bank of Los Angeles, and of the Long Beach Federal Savings and Loan Association, and of various other seizures and schemes, said defendant John H. Fahey, just four days before his unlawful and arbitrary seizure of the Federal Home Loan Bank of Los Angeles attempted to promulgate

an order sealing the records and files of the Federal Home Loan Bank Administration and System from even the authority of the Courts, and the employees of said Federal Home Loan Bank System are by said rule prohibited even from answering a subpoena duces tecum from any Court. (See Federal Register, Mar. 27, 1946, Page 3187, Order No. 46-4948). The President, T. A. Gregory, of Long Beach Federal Savings and Loan Association, was a member of various committees by various associations of financial institutions throughout the State of California, which were seeking action because of the said defendant, John H. Fahey's unauthorized seizure of said Federal Home Loan Bank of Los Angeles and was instrumental in causing said other associations to raise funds to bring litigation against the said John H. Fahey and A. V. Ammann for their said unauthorized and unlawful seizure of the Federal Home Loan Bank of Los Angeles, and was also instrumental in causing a Congressional Investigation of the said John H. Fahey and his said seizure of the said Federal Home Loan Bank of Los Angeles to be conducted.

That each and all of said facts were known to the said defendants John H. Fahey and A. V. Ammann and that the seizure by them of the Long Beach Federal Savings and Loan Association was motivated by malice and vindicativeness and was also made with the intent to intimidate and coerce the said president, T. A. Gregory, from testifying at the said Congerssional Investigation and to intimidate and terrify the other financial institutions contributing to and about to bring the said litigation against the said John H. Fahey and A. V. Ammann and their unauthorized and unlawful seizure and confiscation of the Federal Home Loan Bank of Los Angeles.

IV

Answering Paragraph X of plaintiffs' Complaint, defendant Long Beach Federal Savings and Loan Association admits all of the allegations in said paragraph contained and in this connection alleges the said defendants John H. Fahey and A. V. Ammann have dealt with

said Long Beach Federal Savings and Loan Association's assets, bonds, notes, deeds of trust, cash and other securities to the extent of many millions of dollars with the said Federal Home Loan Bank of Los Angeles
299 which they also arbitrarily and unlawfully seized and intermixed and co-mingled the assets of both said seized institutions purportedly transferring Long Beach Federal Savings and Loan Association assets to said seized Federal Home Loan Bank of Los Angeles and purportedly lending and advancing money from said seized Federal Home Loan Bank of Los Angeles to said Long Beach Federal Savings and Loan Association to amounts and extents of many millions of dollars, exact details of which are at this time unknown to this answering defendant. That at the time of said seizure of said Long Beach Federal Savings and Loan Association, the said defendants John H. Fahey and A. V. Ammann had in their possession, or under their control, in the said Federal Home Loan Bank of Los Angeles, several million dollars of United States Government bonds and other assets belonging to said Long Beach Federal Savings and Loan Association. That the records, receipts, vouchers and other evidences of said Federal Home Loan Bank of Los Angeles holding securities belonging to said Long Beach Federal Savings and Loan Association have all been seized and confiscated from possession of this answering defendant by the said defendants John H. Fahey and A. V. Ammann at the time when they unlawfully and arbitrarily seized and took over possession and control of this answering defendant Long Beach Federal Savings and Loan Association.

V

Answering Paragraph XII of plaintiffs' Complaint, defendant Long Beach Federal Savings and Loan Association admits all of the allegations therein contained, but in this connection, alleges that inasmuch as said purported seizure and said purported appointment of said conservator were wholly and completely unconstitutional, illegal and void, said association's powers to transact business are not suspended thereby, nor is said associa-

tion precluded from defending itself from the attacks of the other defendants thus made upon it.

300

VI

Answering Paragraph XIV of plaintiffs' Complaint, defendant, Long Beach Federal Savings and Loan Association admits all of the allegations therein contained and that it is informed and believes and in this connection alleges that it was and is the intent of the said other defendants to destroy the identity of said defendant Long Beach Federal Savings and Loan Association by merging it with and into various other financial organizations and thereby work the destruction of said Long Beach Federal Savings and Loan Association before recourse can be had to the Courts of the United States for a fair and impartial trial and hearing as to the validity, constitutionality and authority of said other defendants in their said arbitrary and unlawful seizure of the assets and property of said defendant Long Beach Federal Savings and Loan Association.

VII

Answering Paragraph XV of plaintiffs' Complaint, defendant Long Beach Federal Savings and Loan Association admits all of the allegations therein contained, and it is informed and believes and therefore alleges said defendants, John H. Fahey and/or A. V. Ammann, and their various deputies, employees, and assistants, have dealt with all of the property of defendant Long Beach Federal Savings and Loan Association, as if they were said association itself, have paid out its money, made loans from its assets, collected, or attempted to collect on its notes, deeds of trust, bonds, rentals and other income producing assets and have attempted to pledge, hypothecate, encumber and otherwise part with its assets as securities for loans, advances, and borrowings by said defendants. That the amounts, nature and details of each and all of said transactions are fully and completely within the knowledge of the said defendants John H. Fahey and/or A. V. Ammann and their various deputies and assistants and are but slightly and vaguely known to

defendant Long Beach Federal Savings and Loan
301 Association, and that all information concerning such transactions has been refused to said association by said defendants, John H. Fahey and A. V. Ammann, and all of them.

VII

Answering Paragraph XVI of said complaint, defendant Long Beach Federal Savings and Loan Association admits all of the allegations in said paragraph contained, except that it denies that any of the paying out, disbursements or actions of the said defendants, John H. Fahey and A. V. Ammann, and their various deputies and assistants were for lawful purposes or were authorized and in this connection, defendant Long Beach Federal Savings and Loan Association alleges that the said defendant John H. Fahey and A. V. Ammann were completely without any authority, right, title, interest or ownership whatsoever in or to any and all of the assets of the said defendant Long Beach Federal Savings and Loan Association and that each and every act that the said John H. Fahey and A. V. Ammann have attempted or purported to perform in connection with the assets of the said defendant Long Beach Federal Savings and Loan Association is, and are, illegal, invalid and void. That the said defendants John H. Fahey and A. V. Ammann, have no authority, jurisdiction or power over the said defendant Long Beach Federal Savings and Loan Association, or its assets, and that every act which they have performed, they have done as trespassers and wrong-doers, who were able by threats, intimidation and show of force to unlawfully, wrongfully and improperly wrest possession and control of said assets and said association from the defendant Long Beach Federal Savings and Loan Association.

VIII-A

Answering Paragraph XVII of plaintiffs' complaint, defendant Long Beach Federal Savings and Loan Association admits all of the allegations in that paragraph contained and in this connection alleges that at all
302 times since the inception of said association in 1934, it has uniformly progressed and grown in total

amount of deposits, earnings, surplus, and in all other ways, and has, during said period, grown from an initial total capital of approximately $5000.00 to a total capital of in excess of Twenty-six Million Dollars ($26,000,000.00) at the time when said defendants, John H. Fahey and A. V. Ammann launched their attack upon it with the intent to destroy it.

Said defendant Long Beach Federal Savings and Loan Association is informed and believes and therefore alleges that during the first week of said destructive campaign of said defendants John H. Fahey and A. V. Ammann, they were enabled to, and did, reduce its assets and total capital by nearly 25% or by approximately Six Million Dollars ($6,000,000.00).

Answer of Defendant Long Beach Federal Savings and Loan Association of Cross Claim in Interpleader of Title Service Company.

Defendant Long Beach Federal Savings and Loan Association, organized and existing under and by virtue of the laws of the United States, severing itself from its co-defendants, and answering Cross Claim in Interpleader of Title Service Company, for itself alone, admits, denies and alleges as follows:

IX

Defendant Long Beach Federal Savings and Loan Association alleges that it is an association organized and existing under and by virtue of the laws of the United States of America. That each of its member shareholders own a mutual undivided interest in it and the said association has its principal place of business in the City of Long Beach, County of Los Angeles, State of California. That said association is a citizen of the State of California, and is a resident within the territory of the Central Division of the District Court of the United States for the Southern District of California.

X

Answering Paragraphs I and II of said cross-claim of defendant Title Service Company, defendant Long

Beach Federal Savings and Loan Association admits the allegations in said paragraph contained and joins in said allegations on its own behalf.

XI

Answering Paragraph III of said cross-claim of defendant Title Service Company, defendant Long Beach Federal Savings and Loan Association admits all of the allegations therein contained, and in this connection also alleges that all of its detailed records, accounts, books, files, documents, memorandums, and other sources of information concerning the said escrows, loans, sales, contracts, collections, etc., have been seized by the defendants John H. Fahey and A. V. Ammann wrongfully and without authority, and by said defendants John H. Fahey and A. V. Ammann withheld and concealed from said defendant Long Beach Federal Savings and Loan Association.

XII

Answering Paragraph IV of said cross-claim of defendant Title Service Company, defendant Long Beach Federal Savings and Loan Association admits all the allegations contained in said paragraph and in this connection alleges that said purported appointment of said conservator, defendant A. V. Ammann, and said purported seizure of said Long Beach Federal Savings and Loan Association's assets by said defendants, John H. Fahey and A. V. Ammann, were each and both of them void, unconstitutional, illegal and invalid and conferred no right, title or authority of any nature whatsoever upon the said defendants, John H. Fahey and A. V. Ammann, or on either of them, and that such purported appointment creates a lien, cloud and encumbrance on the title to and ownership of each and all of said eight thousand (8,000) parcels of real property so situated in the County of Los Angeles, State of California, as aforesaid.

304 XIII

Answering Paragraph V of said cross-claim of defendant Title Service Company, defendant Long Beach Federal Savings and Loan Association admits the alle-

gations in said paragraph contained and alleges that each and all of the one hundred seventy-four (174) notes and deeds of trust securing the same were, and are, owned by, and the property of, this defendant Long Beach Federal Savings and Loan Association, and were illegally, unlawfully and wrongfully seized and wrested from its possession and control by the said defendants John H. Fahey and A. V. Ammann, et al. and that demand has been made, and is hereby made, by the said Long Beach Federal Savings and Loan Association that the said defendant and cross-complainant, Title Service Company, return and deliver each and all of said notes and deeds of trust to said Long Beach Federal Savings and Loan Association, who is rightful owner thereof and entitled to the possession thereof, and that such demands and requests by the said A. V. Ammann create a lien, cloud and encumbrance on the title to and ownership of each and all of said eight thousand (8,000) parcels of real property so situated in the County of Los Angeles, State of California, as aforesaid.

XIV

Answering Paragraph IX of said cross-claim of defendant Title Service Company, defendant Long Beach Federal Savings and Loan Association admits the allegations therein contained and in this connection alleges that each and all of said notes and deeds of trust in said paragraph IX described, and all of the same, were in the possession and are under the control and direction of this answering defendant Long Beach Federal Savings and Loan Association, when, on or about the 20th day of May, 1946, they were forcibly and illegally and without any authority whatsoever wrested and seized from it by the said defendants John H. Fahey and A. V. Ammann, et al., all as herein more particularly alleged.

XV

Answering Paragraph XI of said cross-claim of defendant Title Service Company, defendant Long Beach Federal Savings and Loan Association admits all of the allegations in said paragraph contained and in this

connection alleges that it, Long Beach Federal Savings and Loan Association, and only it, is authorized, empowered and entitled by the terms of each and all of said deeds of trust to make any substitution of trustees under any or all of the same as therein provided.

That defendants John H. Fahey and A. V. Ammann, et al, have illegally, unlawfully and wrongfully, by physical force and violence, seized and wrested possession of said notes and deeds of trust from the rightful owner of the same, said Long Beach Federal Savings and Loan Association, and defendant Long Beach Federal Savings and Loan Association is informed and believes and therefore alleges, that defendants John H. Fahey and A. V. Ammann are attempting to exercise in the name of the said Long Beach Federal Savings and Loan Association and/or in the name of A. V. Ammann and/or the name of John H. Fahey, as purported conservator, or under other purported authority, documents, substituting and transferring the trustee named in said Deed of Trust, Title Service Company, and have attempted to, purporting to, name and designated some other person, firm or corporation, whose name or names are at present unknown to defendant Long Beach Federal Savings and Loan Association as trustee thereunder.

Said defendants, John H. Fahey and A. V. Ammann's purpose and intent in purporting to make such substitution is an effort to avoid submitting themselves to the jurisdiction of this Honorable District Court and litigating therein the validity, legality and constitutionality of their unlawful and invalid acts in seizing and wresting physical possession and control of said Long Beach Federal Savings and Loan Association from its duly
306 elected and qualified officers, management and board of directors.

That the person or persons, individual or individuals, firm or firms, corporation or corporations, which said defendants Fahey and A. V. Ammann will attempt to substitute for the said named trustee, Title Service Company, will be, defendant Long Beach Federal Savings and Loan Association is informed and believes and therefore alleges, the mere alter ego or dummy of the said defendants John H. Fahey and A. V. Ammann and will not

impartially and fairly exercise the functions of trustee holding title to real property for the benefit of various borrowers and the named beneficiary Long Beach Federal Savings and Loan Association.

XVI

That by said attempted substitution of trustees as hereinbefore alleged, the said defendants John H. Fahey and A. V. Ammann are attempting to convey, transfer, allocate and alter the ownership and legal title to more than 8,000 separate parcels of real property, each and all of which are situated in the County of Los Angeles, State of California, within the jurisdiction of this Honorable District Court. That the determination of the validity or invalidity of such transfer or purported conveyance of the said defendants John H. Fahey and A. V. Ammann of necessity involves an adjudication as to the ownership and title of said 8,000 parcels of real property so situated in Los Angeles County, California. That in attempting to make such substitution and in collecting, or attempting to collect, payments on the said notes and deeds of trust, said defendants John H. Fahey and A. V. Ammann are usurping and trespassing upon the ownership of said defendant Long Beach Federal Savings and Loan Association, in and to the said notes and deeds of trust and the said 8,000 parcels of real property, title to which is conveyed thereby. That the said invalid and unconstitutional appointment of the said defendant A. V. Ammann by the defendant John H. Fahey, and the illegal, unauthorized and invalid acts of the defendants
207 John H. Fahey and A. V. Ammann, in connection with each and all of said 8,000 deeds of trust, creates a lien, cloud and encumbrance upon the title to, and ownership of, each and all of said notes with an aggregate face value in excess of Twelve Million Dollars ($12,000,000.00) and also creates a lien, cloud, encumbrance upon the said 8,000 parcels of real property, all situated in the County of Los Angeles, State of California, and clouds and impairs and encumbers the ownership and title of each and all of the same.

Answer of defendant Long Beach Federal Savings and Loan Association to cross-claim in interpleader of Robert H. Wallis

Defendant Long Beach Federal Savings and Loan Association, organized and existing under and by virtue of the laws of the United States, severing itself from its co-defendants, and answering Cross Claim in Interpleader of Robert H. Wallis, for itself alone, admits, denies and alleges as follows:

XVII

Defendant Long Beach Federal Savings and Loan Association alleges that it is an association organized and existing under and by virtue of the laws of the United States of America. That each of its member shareholders own a mutual undivided interest in it and the said association has its principal place of business in the City of Long Beach, County of Los Angeles, State of California. That said association is a citizen of the State of California and is a resident within the territory of the Central Division of the District Court of the United States for the Southern District of California.

XVIII

Answering Paragraphs I, II, III and IV of said cross-claim in interpleader of Robert H. Wallis, defendant Long Beach Federal Savings and Loan Association admits the allegations contained in said paragraphs.

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XIX

Answering Paragraph V of said cross-claim in interpleader, defendant Long Beach Federal Savings and Loan Association admits the allegations contained in said paragraph and in this connection alleges that its President is T. A. Gregory. That said T. A. Gregory actively participated in various committees of the stockholders and members of the Federal Home Loan Bank of Los Angeles, which committees were about to institute litigation against the said John H. Fahey and A. V. Ammann, as defendants, in an effort to set aside the unauthorized

and unlawful seizure of the Federal Home Loan Bank of Los Angeles by said defendants John H. Fahey and A. V. Ammann. That the Long Beach Federal Savings and Loan Association owns stock in the said Federal Home Loan Bank of Los Angeles and owns a proportionate share of the surplus of said Federal Home Loan Bank of Los Angeles. That said stock and surplus aggregate a total value of approximately Four Hundred Thousand Dollars ($400,000.00). That the said seizure by the said John H. Fahey and A. V. Ammann of the Long Beach Federal Savings and Loan Association was without justification or authority whatsoever and was done for the purpose of intimidating the President of said association, T. A. Gregory, and for the purpose of preventing his testifying at a Congressional Investigation of the seizure of the Federal Home Loan Bank of Los Angeles, and also for the purpose of intimidating various other savings and loan associations located in Southern California, which said associations were also owners of stock in the seized Federal Home Loan Bank of Los Angeles, and were contributing to litigation against John H. Fahey and A. V. Ammann.

XX

Answering Paragraph VI of said cross-claim in interpleader of defendant Robert H. Wallis, defendant Long Beach Federal Savings and Loan Association admits the allegations contained in said paragraph.

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XXI

Answering Paragraph VII of said cross-claim in interpleader of defendant Robert H. Wallis, defendant Long Beach Federal Savings and Loan Association admits the allegations contained in said paragraph, and in this connection alleges that said cross-claimant Robert H. Wallis has performed varied, extensive and valuable services for it in Washington, D. C. in connection with said Congressional Committee Hearings and in numerous and various other ways and places.

XXII

Answering Paragraph VIII of said cross-claim in interpleader of defendant Robert H. Wallis, defendant Long

Beach Federal Savings and Loan Association admits the allegations contained in said paragraph.

XXIII

Answering Paragraph IX of said cross-claim in interpleader of defendant Robert H. Wallis, defendant Long Beach Federal Savings and Loan Association admits the allegations contained in said paragraph and in this connection alleges that the said defendants John H. Fahey and A. V. Ammann have made statements to each and all of the member shareholders of said defendant Long Beach Federal Savings and Loan Association and have made numerous public statements to the Press and otherwise seeking to use said appropriation of said Fifty Thousand Dollars ($50,000.00) as a justification for their illegal and unwarranted seizure of said association and its assets and in such statements and releases, have distorted and misstated the resolutions and other actions of said Board of Directors of said association, by which said appropriation was made.

XXIV

Answering Paragraph X of said cross-claim in interpleader of defendant Robert H. Wallis, defendant Long Beach Federal Savings and Loan Association admits the allegations contained in said paragraph and asks that this Honorable Court, as applications be made to it apportion and distribute said sum of Fifty Thousand Dollars ($50,000.00) to the various firms of attorneys endeavoring to prevent the defendants John H. Fahey and A. V. Ammann from carrying out their malicious intent to destroy said defendant Long Beach Federal Savings and Loan Association.

XXV

Answering Paragraph XI of said cross-claim in interpleader of defendant Robert H. Wallis, defendant Long Beach Federal Savings and Loan Association admits the allegations therein contained and in this connection alleges that the only demands and instructions made by

it upon the said defendant Robert H. Wallis are that he fulfill and obey the duties imposed upon him by the purposes for which said check was delivered to him, to-wit: to provide for the defense of said association from the malicious and vindicative attacks and attempts to destroy it by the said defendants John H. Fahey and A. V. Ammann and their various deputies.

XXVI

Answering Paragraph XII of said cross-claim in interpleader of defendant Robert H. Wallis, defendant Long Beach Federal Savings and Loan Association alleges that it also will join in the applications to this Honorable Court for proper allowances and distributions of this said fund for the expenses, including attorney fees, Court costs, transcript charges and various other expenses required and necessary in the efforts to restore said Long Beach Federal Savings and Loan Association to its lawful management and remove it from the unlawful usurpation and illegal control of the defendants John H. Fahey and A. V. Ammann, et al.

XII For a separate and distant cause of cross-claim against John H. Fahey, A. V. Ammann, and the remaining named defendants, Long Beach Federal Savings and Loan Association, a corporation, organized and existing under and by virtue of the laws of the United States of America, alleges:

I

(a) This action arises under the Fifth Amendment of the Constitution of the United States of America in that Plaintiffs have been deprived of property in excess of Twenty-six Million ($26,000,000.00) Dollars, without due process of law as hereinafter more fully appears.

(b) This action also arises under and involves the interpretation and effect of the following Acts of Congress of the United States of America:

(1) "Home Owners Loan Act of 1933", as amended—Public No. 43—73rd Congress—48 Statutes 132 (June 13, 1933—Chapter 64, Paragraph 1, 48 Statutes 128)

(2) "Federal Home Loan Bank Act", as amended—Public No. 304—72nd Congress (July 22, 1932, Chapter 522, Paragraph 1, 47 Statutes 725 and amendments thereto)

(3) "The National Housing Act"—Public No. 479—73rd Congress (June 27, 1934, Chapter 847, 48 Statutes 1246 and amendment thereto), and

(4) Regulations, rules and directives purportedly made and adopted pursuant to and under each and all of said Acts.

(c) This action involves amounts in controversy in excess, exclusive of interest and costs, of the sum of Three Thousand ($3,000.00) Dollars, to-wit: involves amounts in controversy in excess of Twenty-six Million Dollars ($26,000,000.00).

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(d) This action also seeks injunctive relief to prevent the wrongful dissipation of private property in amounts in excess of Twenty-six Million ($26,000,000.00) Dollars, wrongfully taken without due process of law and to restrain the enforcement, operation and execution, in whole or in part, of Acts of Congress, upon the ground that such Acts or parts thereof, are repugnant to the Constitution of the United States, and Amendment V, thereof, and therefore pursuant to the provisions of Section 380 (a) of Title 28 of the Federal Judicial Code, the Plaintiffs respectfully request the senior Circuit Judge of the Ninth Judicial Circuit to immediately designate three (3) Judges to comprise the Court to hear this action as in said Section 380 (a) provided.

This action also arises under Title 28, Section 41, subdivision 26, subsections a, b, c, d, and e, of the Federal Judicial Code. Defendant Title Service Company, a corporation, is a citizen of the State of California, defendants, John H. Fahey and A. V. Ammann, are, defendant is informed and believes, citizens of the District of Columbia, which is other than the State of California. The amount in controversy in the principal action, exceeds Five Hundred Dollars ($500.00), and defendant is informed and believes said sum amounts to approximately Twenty-six Million Dollars ($26,000,000.00). The amount involved in defendant Title Service Company's Cross-claims exceeds Five Hundred Dollars ($500.00), to-wit:

is approximately the sum of Twelve Million Dollars ($12,000,000.00.)

(e) That the defendant, Long Beach Federal Savings and Loan Association, is a mutual thrift association, a citizen of the State of California, with its principal place of business in the City of Long Beach, County of
313 Los Angeles, State of California, and is, therefore, a resident of the district wherein this Honorable Court is situated.

(f) This action also arises under Title 28, Section 41, subdivision 26, subsections a, b, c, d, and e, of the Federal Judicial Code. Defendant Robert H. Wallis, is a citizen of the State of California, defendants John H. Fahey and A. V. Ammann are, this defendant is informed and believes, citizens of the District of Columbia, which is other than the State of California.

That the amount involved in defendant Robert H. Wallis' cross-claims exceeds Five Hundred Dollars ($500.00) to, wit: is approximately in the sum of Fifty Thousand Dollars ($50,000.00).

This action also arises under Title 28, Section 118 of the Federal Judicial Code, Certain of the defendants cannot be found within the district of this Honorable District Court of the United States and the action involves claims to, and the removal of clouds, liens and encumbrances upon over Twenty-six Million Dollars ($26,000,000.00) worth of real and personal property situated and located within the District and jurisdiction of this Honorable Court.

II

That the defendants John H. Fahey and A. V. Ammann have not only seized unlawfully, arbitrarily and without authority, possession and control of over Twenty-six Million Dollars ($26,000,000.00) Dollars of real and personal property, all situated in the County of Los Angeles, State of California, but have in the period elapsing since said seizure, dealt with said seized property in the following and other manners:

(a) During a run on said defendant Long Beach Federal Savings and Loan Association's institution, defendants John H. Fahey and A. V. Ammann paid out from the

assets of said institution to member shareholders
314 thereof sums in excess of Six Million Dollars ($6,000,000.00); that said run was caused and created by the defendants John H. Fahey and A. V. Ammann, maliciously and intentionally in an effort to destroy the said institution.

(b) Have sold United States Government bonds seized by them in said association and belonging to it to the extent of several million dollars, the exact amount of which is unknown to defendant Long Beach Federal Savings Loan Association.

(c) Have undertaken and attempted to release and cause to be reconveyed over Eight Hundred Thousand Dollars ($800,000.00) worth of notes and deeds of trust, which deeds of trust convey title to one hundred seventy-four (174) parcels of real property situated in the County of Los Angeles, State of California.

(d) Defendant Long Beach Federal Savings and Loan Association is informed and believes and therefore alleges that the defendants John H. Fahey and A. V. Ammann have assigned, transferred, and set over to the Federal Home Loan Bank of Los Angeles, which they had also unlawfully and arbitrarily seized, now designated and called by said defendants, as the Federal Home Loan Bank of San Francisco (formerly the Federal Home Loan Bank of Portland), approximately five to six million dollars in face value worth of notes (each and all of which notes are payable at Long Beach, California) and deeds of trust belonging to and owned by this defendant Long Beach Federal Savings and Loan Association, which were among the assets unlawfully and wrongfully seized by said defendants John H. Fahey and A. V. Ammann from the defendant Long Beach Federal Savings and Loan Association. That the assignments of said notes and trust deeds purportedly made thereunder by said defendants John H. Fahey and A. V. Ammann are invalid, illegal and void.

(e) That each and all of the notes and deeds of trust seized by said defendants John H. Fahey and A. V. Ammann from the said Long Beach Federal Savings and Loan Association, aggregating above twelve Million
315 Dollars ($12,000,000.00) in unpaid balance and approximately 8,000 in number, conveyed separate par-

cels of real property situated, as required by law within fifty (50) miles of the main office of said Long Beach Federal Savings and Loan Association, in the City of Long Beach, County of Los Angeles, State of California, to defendant and cross-claimant interpleader, Title Service Company, a California corporation. That all of said notes are payable in Long Beach, Los Angeles County, California, and the makers of said notes, and the trustors on said deeds of trust are all residents of said Los Angeles County, California. That said notes and deeds of trust have various clauses and provisions in them authorizing a conveyance of said legal title to said real property from Title Service Company, having its principal place of business in the City of Long Beach, County of Los Angeles, State of California, as trustee to another, different, or substituted trustee, said conveyance, according to said provisions, being authorized to be made only by the beneficiary of said deed of trust, to-wit: the Long Beach Federal Savings and Loan Association. That said defendants, John H. Fahey and A. V. Ammann, in furtherance of their efforts to destroy and break up the defendant Long Beach Federal Savings and Loan Association, and to dissipate, merge and disperse its assets and business have, and are attempting to, execute conveyances of said legal title, thus conveyed and vested in the said Title Service Company, a corporation, as trustee, to other and different trustees, the name or names of which are at present unknown to defendant Long Beach Federal Savings and Loan Association. That said dfendants John H. Fahey and A. V. Ammann are without authority or power to make such substitution and if the same be done, or be attempted to be done, by them, it will cloud, impair and encumber the titles to said 8,000 parcels of real property situated in the County of Los Angeles, State of California.

That defendant Long Beach Federal Savings and Loan Association is informed and believes and therefore
316 alleges that defendants John H. Fahey and A. V. Ammann are attempting and purporting to make such conveyances of such title to real property by substituting trustees as herein alleged on all of the notes and deeds of trust, the possession of which they unlawfully and wrong-

fully seized from defendant Long Beach Federal Savings and Loan Association, including the titles to the notes and deeds of trust having a face value of approximately five million dollars ($5,000,000.00), which the defendants John H. Fahey and A. V. Ammann have purportedly and without authority attempted to assign and transfer to the said Federal Home Loan Bank of Los Angeles purportedly merged by said defendants into the Federal Home Loan Bank of Portland and now styled by said defendants, John H. Fahey and A. V. Ammann as the Federal Home Loan Bank of San Francisco.

That the unconstitutional, unlawful and unauthorized appointment by the Defendant John H. Fahey of A. V. Ammann, as purported conservator of the Long Beach Federal Savings and Loan Association and the unlawful seizure by him of the physical possession and control of the said Twenty-six Million Dollars ($26,000,000.00) of assets, of said Long Beach Federal Savings and Loan Association, and the depriving of the Long Beach Federal Savings and Loan Association, and its sixteen thousand (16,000) shareholder members, of the possession and control of said assets, constitutes an encumbrance, lien, or cloud upon the title to the real property and the personal property belonging to the Long Beach Federal Savings and Loan Association, and its sixteen thousand (16,000) shareholder members, all of which Twenty-six Million Dollars ($26,000,000.00) of assets, consisting of real property, notes and trust deeds on real property, bonds, securities, equipment, and cash, have at all times herein mentioned been, and are now, wholly within the State of California, and wholly within the jurisdiction of this Court.

317 That the said defendants John H. Fahey and A. V. Ammann have checked out and drawn against bank balances, assets of and belonging to defendant Long Beach Federal Savings and Loan Association, in excess of a million dollars and have made deposits in the said accounts and withdrawals from said account in amounts aggregating many millions of dollars. That each and all of said deposits and withdrawals have been made within the County of Los Angeles, State of California.

That each, all and every act of the said defendants

John H. Fahey and A. V. Ammann and their various deputies, assistants, servants, agents, employees and subordinates, have been performed by them upon, concerning and dealing with real and personal property of an aggregate value of in excess of Twenty-six Million Dollars ($26,000,000.00), all situated in the County of Los Angeles, State of California, within the jurisdiction of this Honorable District Court, and having a permanent local situs in the City of Long Beach, County of Los Angeles, State of California. That the said defendants are trespassers upon real property belonging to the defendant Long Beach Federal Savings and Loan Association situate within the County of Los Angeles, State of California, aggregating in value more than one hundred thousand dollars ($100,000.00), and comprising several parcels which said real property is owned by said defendant Long Beach Federal Savings and Loan Association in fee simple. That said defendants John H. Fahey and A. V. Ammann have forcibly, unlawfully and without authority seized and wrested from defendant Long Beach Federal Savings and Loan Association notes, securities, bank accounts and other personal property aggregating in value of many millions of dollars. That each and all of said real and personal property was so forcibly and unlawfully seized and is now wrongfully and unlawfully detained by the said defendants, and each and all of them, in the County of Los Angeles, State of California.

318 That upon determination of the issues presented in this litigation, this Honorable District Court can enforce its process directly against the real and personal property physically within its jurisdiction and grant relief concerning it, which is the objective sought in this cross-claim and in the plaintiffs' complaint and the various cross-claims of the inter-pleading defendants.

That this action is a proceeding to remove encumbrances, liens and clouds upon the title to real and personal property and for the returning of assets, the physical possession of which has been unlawfully seized by said defendants John H. Fahey and A. V. Ammann and the legal title to which is in, and owned by defendant and cross-claimant Long Beach Federal Savings and Loan Association, each and every parcel of which property,

both real and personal, is physically within the jurisdiction of this Honorable District Court and approximately Eight Hundred Fifty Thousand Dollars ($850,000.00) of which is physically in the Registry of this Honorable District Court.

That such incidental relief as is sought by way of injunction is purely and simply to prevent said defendants John H. Fahey and A. V. Ammann from destroying, merging and dissipating the said real and personal property, which they have thus seized from defendant and cross-claimant Long Beach Federal Savings and Loan Association, while they the said defendants John H. Fahey and A. V. Ammann are wrongfully and unlawfully in possession of said seized real and personal property, and from placing it beyond the power of this Honorable Court to restore said real and personal property to its true and rightful owner from whom it was wrongfully seized by said defendants John H. Fahey and A. V. Ammann.

That the determination of this action and the issues involved in it directly and vitally affect the financial welfare of over sixteen thousand (16,000) member shareholders of said association, whose aggregate shares
319 exceed twenty-two and one-half million dollars ($22,500,000.00) and directly and vitally affect and concern the title to and the ownership of the homes of more than 8,000 borrower members, the title to which homes have been by them conveyed in trust under deeds of trust with an aggregate unpaid total balance of approximately Twelve Million Dollars ($12,000,000.00). That the vast majority of the said individual sixteen thousand (16,000) shareholder members and all of said eight thousand (8,000) borrowers members, whose total interests exceed Thirty-four Million Dollars ($34,000,000.00) are residents of the County of Los Angeles, State of California, within the jurisdiction of this Honorable District Court of the United States.

III

That the defendant Long Beach Federal Savings and Loan Association was organized by its President T. A. Gregory and its present Board of Directors and manage-

ment during the year 1934, at which time, its total capital was Five Thousand Dollars ($5,000.00). That ever since said date, it has been under the direction, operation and management of the same Board of Directors with the exception of one director who was added to said Board several years ago. That said management and board of directors have been re-elected at each and every annual meeting by the shareholder members from the time of the organization in said company in 1934 to the present time. That under said management and direction, it has progressively grown from said capital of Five Thousand Dollars ($5,000.00) until at the time of said unauthorized and unlawful seizure, on the 20th day of May, 1946, by said defendants John H. Fahey and A. V. Ammann, its total assets were in excess of Twenty-six Million Dollars ($26,000,000.00). That it has uniformly paid a dividend to its member shareholders, during each and every year, from the time of its organization to the time of its seizure, said dividends varying from a maximum of four percent (4%) per annum to a minimum of two and one-half (2½%) percent per annum.

320 That at the time of said seizure of said association by said defendants, John H. Fahey and A. V. Ammann, it had accumulated a surplus reserve and undivided profits (above all obligations of said association) amounting to approximately One Million Three Hundred Thousand Dollars ($1,300,000.00). Said association was, at the time of said seizure and at all times prior thereto from the date of its organization to the time of said seizure had been fully solvent, liquid and sound and was then and at all times prior thereto had been able to pay all of its obligations in full in cash at any and all times and in addition to the said surplus reserves of undivided profits of approximately One Million Three Hundred Thousand Dollars ($1,300,000.00) had also accrued profits of increased value of securities, government bonds, and other assets of several hundred thousand dollars. That attached hereto and incorporated herein by reference and marked Exhibit A is a full, true and correct copy of the last statement of condition of said association prior to the time of its seizure by said defendants John H. Fahey and A. V. Ammann.

IV

That on the 18th day of May, 1946, defendant John H. Fahey caused his deputies and agents, examiners for the Federal Home Loan Bank Administration to commence an examination of the affairs of the Long Beach Federal Savings and Loan Association. That at no time, during said examination, or at any time, subsequent thereto, did said defendant John H. Fahey, or any of his deputies, employees, agents or examiners, make any statement, written or oral, to the defendant Long Beach Federal Savings and Loan Association, nor to any of its officers, management or directors, complaining of any irregularity of any of the affairs of said Long Beach Federal Savings and Loan Association, or ordering any changes in its methods of doing business, nor directing it or instructing it to cease or change any practices, nor in any other way indicating, stating or outlining any fault, error or
321 mistake in the said records, affairs and business of said association, nor did the said defendants, or any of them, make any preliminary or interlocutory orders, directions, or suggestions of any nature or sort whatsoever of the said defendant Long Beach Federal Savings and Loan Association, nor to any of its management or directors.

V

That said association, as hereinbefore alleged, was fully solvent and had a large surplus. That no defects in its capital structure, assets, methods of conducting its business, or any other nature whatsoever, exist. That said association, as is shown by its record of growth, from Five Thousand Dollars ($5,000.00) in 1934 to Twenty-six Million Dollars ($26,000,000.00) twelve years later, in 1946, was soundly and brilliantly managed and directed. That in all manners, its records, books and accounts, affairs and business were regularly, safely and properly conducted, operated and managed.

VI

That on Monday, the 20th day of May, 1946, defendant A. V. Ammann, with various other persons accompanying

him, whom the said defendant stated were his employees and deputies, all purporting to act under the authority of the defendant John H. Fahey, entered the home offices of the said Long Beach Federal Savings and Loan Association in Long Beach, Los Angeles County, California. That said defendant A. V. Ammann orally announced that he had been appointed by the defendant John H. Fahey, as Conservator for the defendant Long Beach Federal Savings and Loan Association, and that he had thereby taken possession of said association and its assets. That he then and there refused and declined to state any reason, ground and/or causes for his so seizing this said institution and its assets and stated that an order had been entered in Washington, D. C. authorizing him to make such seizure. That he stated that no order of any Court whatsoever, or other judicial process, had
322 been taken and that he needed no such Court order or process. That the defendant Long Beach Federal Savings and Loan Association's President, T. A. Gregory at first declined to surrender possession of said association and its assets and was then and there threatened by the said A. V. Ammann with criminal prosecution for violation of the laws of the United States and resisting an officer of the United States.

That said President T. A. Gregory then and there demanded and requested receipts or other acknowledgement of delivery of the said assets of said association, exceeding in value Twenty-six Million Dollars ($26,000,000.00) and that despite and notwithstanding repeated demands for such receipts and acknowledgements of delivery, said defendant A. V. Ammann declined and refused and one month after the time of said seizure, still declines and refuses to give any such receipts, or acknowledgements.

That said seizure and every part of the same was and is in violation of, and contrary to the provisions of the Fifth Amendment of the Constitution of the United States.

That the property thus seized by the said defendant A. V. Ammann included over Thirty Thousand Dollars ($30,000.00) in cash; over One Hundred Fifty Thousand Dollars ($150,000.00) in bearer bonds; approximately Twelve Million Dollars ($12,000,000.00) in notes and deeds of trust conveying real property situated in the County

of Los Angeles, State of California; approximately Ten Million Dollars ($10,000,000.00) United States Government Bonds; several hundred thousand dollars worth of real property owned by said association in fee simple, all situated in the County of Los Angeles, State of California, and also included the records, books, files, papers, memorandums and documents, credits, receipts, notes, certificates and all other papers of said association. That said seizure and every part of the same was contrary to and in violation of provisions of the Fourth Amendment of the Constitution of the United States.

323 That ever since the time of said seizure, the said defendants John H. Fahey and A. V. Ammann and various other defendants purporting to act under their authority and as their subordinates and agents, have remained in said illegal and unlawful possession and control of the said association and its assets, cash, premises, books, documents, files, etc. and during the month that has elapsed since said seizure said defendants have dealt with and purported to carry on the business of said association, have paid out over Six Million Dollars ($6,000,000.00) of its assets in a run which occurred immediately after said defendants' seizure, have pledged between five and six million dollars of its notes and deeds of trust as collateral for loans made to said defendants A. V. Ammann and John H. Fahey, have attempted to convey and transfer the title to 8,000 parcels of real property upon which said association was beneficiary in deeds of trust with an aggregate value in excess of Twelve Million Dollars ($12,000,000.00) have withdrawn bank accounts belonging to said association in excess of One Million Five Hundred Thousand Dollars ($1,500,000.00); have sold, pledged and otherwise disposed of millions of dollars worth of United States government bonds owned by said association. That said defendants are so continuing unlawfully and without authority to operate and manage the affairs of said association and to deal with its assets, loans and business at their pleasure.

That the only authority, justification or rights which said defendants claim or assert for all of their acts herein complained of are orders made by said defendants John H. Fahey and A. V. Ammann themselves

and by their various agents, employees and subordinates, purportedly authorizing them to do the acts herein complained of.

Said defendants John H. Fahey and A. V. Ammann and each and all of them, have, at all times, admitted and asserted to the general public and have communicated in writing to the sixteen thousand member share-
324 holders of said association that the said association was and is liquid, solvent and sound and was and is able to pay all of its obligations in full in cash upon demand.

VII

That the Federal Home Loan Bank of Los Angeles was one of the twelve of such banks existing throughout the United States and had its offices in the City of Los Angeles, State of California. That one of the requirements of the statutes authorizing the existence of Federal Savings and Loan Associations, such as the defendant Long Beach Federal Savings and Loan Association, is that such association shall hold stock in and be a member of Federal Home Loan Bank. That on or about the 23rd day of November, 1944, the then president of the said Federal Home Loan Bank of Los Angeles, Mr. M. M. Hurford died. That one of the members of the Board of Directors of said Federal Home Loan Bank of Los Angeles was T. A. Gregory and was also President of the Long Beach Federal Savings and Loan Association. That upon the death of the then president M. M. Hurford of the Federal Home Loan Bank of Los Angeles, James Twohy, who was then governor of the Federal Home Loan Bank System, with his offices in Washington, D. C., and who was one of the deputies of, and a close friend of, the defendant John H. Fahey, aspired to the Presidency of the Federal Home Loan Bank of Los Angeles. That C. E. Berry, who was Vice-President of the Federal Home Loan Bank of Los Angeles, and had served said institution since 1934 was elected President of said Federal Home Loan Bank of Los Angeles by the Board of Directors. That under the Federal Home Loan Bank Act, the approval of the said defendant John H. Fahey is required before a President elected by the

Directors of any Federal Home Loan Bank can take office. That various disputes and controversies arose between the defendant John H. Fahey and the Directors of the Federal Home Loan Bank of Los Angeles, that said C. E. Berry was three times elected President of the Federal Home Loan Bank of Los Angeles by the
325 Directors and such election was unanimously confirmed by all of the stockholders of said Federal Home Loan Bank of Los Angeles, but the said defendant John H. Fahey persistently refused to approve the said election of the said C. E. Berry as President of the Federal Home Loan Bank of Los Angeles and refused to give any reasons for so doing. That various committees were appointed from the stockholders in said Federal Home Loan Bank of Los Angeles and from the various building and loan and savings and loan associations throughout the State of California. That said President T. A. Gregory of Long Beach Federal Savings and Loan Association was a member of certain of said committees and was in active and frequent contact with the said defendant John H. Fahey in connection with the said Federal Home Loan Bank of Los Angeles matter. That defendant John H. Fahey unable to dictate to the directors of the Federal Home Loan Bank of Los Angeles finally, on the 29th day of March, 1946, without authority or justification whatsoever and without ever giving any reason therefor, with the assistance of defendant A. V. Ammann, unlawfully and arbitrarily seized all of the assets, securities, affairs and business of the Federal Home Loan Bank of Los Angeles which at the time of said seizure had assets in excess of Forty-three Million Dollars ($43,000,000.00). That the defendant Long Beach Federal Savings and Loan Association owned stock of the face value of Three Hundred Sixty Thousand Dollars ($360,000.00) and owned a proportion of the undivided surplus of approximately Forty Thousand Dollars ($40,000.00), all in the said Federal Home Loan Bank of Los Angeles, thus seized by the defendants John H. Fahey and A. V. Ammann. That upon the same day, said seizure of the said defendants John H. Fahey and A. V. Ammann attempted and purported to merge Federal Home Loan Bank of Los Angeles, with its Forty-

three *Million Dollars* (*$43,000,000.00*) of assets into and with Federal Home Loan Bank of Portland having assets of about Nine Million Dollars ($9,000,000.00) and named the bank, thus seized and merged, Federal Home Loan Bank of San Francisco. That by said seizure and merger, the defendants John J. Fahey and A. V. Ammann claimed to have terminated the existence of the Federal Home Loan Bank of Los Angeles, have discharged all of its officers and directors and ended their existence as such officers. That a Committee of the stockholders of the thus seized Federal Home Loan Bank of Los Angeles was formed and one of the committeemen for said committee was President T. A. Gregory of the Long Beach Federal Savings and Loan Association. That said committee was raising funds from the stockholders of said seized Federal Home Loan Bank of Los Angeles for the purpose of instituting legal action against the defendants John H. Fahey and A. V. Ammann to call them to account in the Federal Courts of the United States for their unlawful, arbitrary and destructive acts in connection with the Federal Home Loan Bank of Los Angeles. That the said defendant T. A. Gregory was active for many months in Washington, D. C. in seeking a Congressional Investigation of the acts of the said defendants John H. Fahey and A. V. Ammann in their seizure and general conduct of the Federal Home Loan Bank of Los Angeles matter. That the efforts to secure a congressional hearing were successful and a date was set for said hearing. That the efforts to raise funds to call John H. Fahey and A. V. Ammann to account in the Federal Courts were bearing fruit and attorneys had commenced work and a Complaint instituting said action was about to be filed. That said matters and all of the same were known to defendants John H. Fahey and A. V. Ammann and in an effort to prevent said T. A. Gregory from testifying at said Congressional hearing and to intimidate all other Federal Savings and Loan Associations throughout Southern California and to prevent the bringing of said action to the Federal Courts concerning their, (the defendants John H. Fahey and A. V. Ammann), seizure of the Federal Home Loan Bank of

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Los Angeles, and as a calculated step to destroy
327 Long Beach Federal Savings and Loan Association, the defendants John H. Fahey and A. V. Ammann, without justification or right whatsoever therefor, also unlawfully and wrongfully seized it, the Long Beach Federal Savings and Loan Association.

That the Long Beach Federal Savings and Loan Association, in expectation and anticipation of the acts of the said defendants John H. Fahey and A. V. Ammann, had on the 8th day of May, 1946, adopted a resolution appropriating the sum of One Hundred Thousand Dollars ($100,000.00) to its attorneys to be used to defend it from the attackes of the said John H. Fahey and A. V. Ammann. That said defendant Long Beach Federal Savings and Loan Association anticipated that if it were seized, it also would be instantly merged into some other association as the said defendants had done in their seizure of the Federal Home Loan Bank of Los Angeles.

That said association is informed and believes [redacted] therefore alleges that said merger would have [redacted] carried out by said defendants, except for the restraining order obtained upon the institution of this action and issued by this Honorable District Court.

VIII

That the said defendants, John H. Fahey and his various subordinates, have adopted rules and regulations prescribing for themselves their own conduct in making seizures, conducting hearing as to whether the seizures they have already made were properly made and in various other ways setting forth their own rules by which they are supposed to conduct themselves.

That defendant Long Beach Federal Savings and Loan Association, having received no definite statements of any reasons for its seizure prior to said seizure and being unable to ascertain any factual grounds for said seizure in the said order No. 5254, made a demand upon said defendants for a more definite statement upon the grounds upon which said seizure had been made by
328 said defendants. That receiving no answer to said demand for statement of causes for its sei-

zure, said association, in an effort to ascertain why said defendants John H. Fahey and A. V. Ammann had seized and confiscated it and its assets, made a request for a hearing by the said John H. Fahey and A. V. Ammann. That after making said request, defendant Long Beach Federal Savings and Loan Association received a document entitled Statement of More Definite Grounds for Appointment of Conservator for Long Beach Federal Savings and Loan Association. That said document was signed by one of the deputies of the said defendant John H. Fahey. That subsequent to the making of the demand and subsequent to the demand for statement of grounds for seizure and request for hearing by said defendant Long Beach Federal Savings and Loan Association, to wit: on or about the 12th day of June, 1946, The Select Committee for Investigation of Executive Agencies, which exceed their authority, (a committee of the House of Representatives of the United States) conducted its hearing in Washington, D. C. inquiring into the unauthorized and unlawful seizure by the defendants John H. Fahey and A. V. Ammann of Federal Home Loan Bank of Los Angeles, and the unauthorized and unlawful seizure of defendant Long Beach Federal Savings and Loan Association. That at said hearing in response to Congressional subpoenas, defendants John H. Fahey and A. V. Ammann, and Harold Lee, governor of the Federal Home Loan Bank System and Kenneth G. Heisler, general counsel of said system, all testified. That the testimony of said defendants, and each and all of them, completely and decisively demonstrated that they have already prejudged and decided the question of the seizure by them of this defendant Long Beach Federal Savings and Loan Association. That Harold Lee, governor of the Federal Home Loan Bank System stated "I don't think Mr. Gregory can ever get it back from that institution" (meaning thereby that Long Beach Federal Savings and Loan Association would never be returned by said defendants John H. Fahey
329 and his aides, regardless of what evidence was produced.) That the defendant John H. Fahey stated in substance that T. A. Gregory, President of defendant Long Beach Federal Savings and Loan Asso-

ciation should never have been granted a charter for a Federal Savings and Loan Association and that he could not get a charter for a State Savings and Loan Association.

That by their Order No. 5309, the said defendants have pretended to hold a purported hearing at which some person, whose name they have not yet seen fit to disclose, is to be authorized to take testimony in Los Angeles, California, which testimony is to be sent to the defendants John H. Fahey and his subordinates for them, to, at some time and place and manner undisclosed by them, decide for themselves whether or not they were justified in their own acts committed by themselves in seizing and attempting to destroy Long Beach Federal Savings and Loan Association. That the conduct of said defendants, and each and every act by them, including the method and manner of their seizure and conduct of the business of said association since it was seized and their testimony at the said Congressional hearing conclusively prove the outcome of their pretended hearing before it is conducted. That they have already determined for themselves that their past conduct has been absolute perfection.

Defendant Long Beach Federal Savings and Loan Association is informed and believes and therefore alleges that the malice, vindicativeness and spite which has motivated said defendants John H. Fahey and A. V. Ammann in their every act in connection with the said Long Beach Federal Savings and Loan Association will be continued in their pretended hearing and that they will use such hearing and the publicity that they intend to promote in connection therewith for the purpose of further destroying and undermining public confidence in the said
330 association and its management and in efforts to create further and additional runs and to further destroy, dissipate and waste the assets and business of said association. That if they are permitted by this Honorable Court so to do, they will, by, and at, such pretended hearing cause irreparable and great harm, damage and destruction to the business, reputation, confidence and good will of said defendant Long Beach Federal Savings and Loan Association. That govern-

ment officials, such as these defendants, exercising the highest authority of the United States of America, who have conclusively demonstrated by their own testimony under oath, the malice and vindicativeness which are motivating their acts, should not be permitted to be the judges at their own hearing of their own acts.

That the defendant Long Beach Federal Savings and Loan Association is under the Constitution of the United States entitled to a fair and impartial tribunal, such as this Honorable District Court to hear, determine and pass upon the questions involved between it and the defendants John H. Fahey and A. V. Ammann and their various deputies and employees.

IX

That the Acts of the Congress of the United States under which said defendants John H. Fahey and A. V. Ammann purport and claim to have acted, no where attempt or purport to delegate or grant to the defendants John H. Fahey and A. V. Ammann the authority which they claim to have exercised in both the Federal Home Loan Bank of Los Angeles seizure and destruction and the seizure and attempted destruction of Long Beach Federal Savings and Loan Association. That in the delegation by said acts of powers to adopt rules and regulations, no where is there any attempt to authorize the said defendants, John H. Fahey and A. V. Ammann, to place themselves above and beyond the reach of all Courts, nor to authorize them without notice, or process of any sort whatsoever, at their whim and pleasure, to seize and destroy completely solvent properly managed, and properly conducted, financial institutions, such as the Federal Home Loan Bank of Los Angeles with its forty-three million dollars ($43,000,000.00) in assets and the Long Beach Federal Savings and Loan Association, with its record of growth in twelve years from five thousand dollars ($5,000.00) to twenty-six million dollars ($26,000,000.00). That each, every and all acts of the defendants, John H. Fahey and A. V. Ammann, and the orders, rules, regulations, directives and decrees, purportedly issued by them, are repugnant to, contrary to, and violate the provisions of,

both the Fourth and Fifth Amendments of the Constitution of the United States of America. That each, and all of said acts, rules, regulations, directives and orders of said defendants, and each and all of them, are unconstitutional, illegal and void.

X

That said defendants John H. Fahey and A. V. Ammann have dealt with, paid out, taken in, conveyed, transferred, assigned and generally dealt with the twenty-six million dollars ($26,000,000.00) of assets which they seized from the defendant Long Beach Federal Savings and Loan Association. This action is primarily for return of the balance of said assets remaining in the hands of said defendants and ancillary and incidental thereto, defendant Long Beach Federal Savings and Loan Association requests an accounting by said defendants, and each of them, for (1) a detailed and itemized, specific statement of the amounts of money, bonds, securities, notes and deeds of trust, contracts and real and personal property taken by said defendants John H. Fahey and A. V. Ammann from it by said illegal and unlawful seizure, and (2) an itemized and detailed statement and accounting as to what the said defendants John H. Fahey and A. V. Ammann have done with such of the said defendant Long Beach Federal Savings
332 and Loan Association's property and assets as they are unable to return to it.

XI

That the defendant Long Beach Federal Savings and Loan Association, by resolution, duly made and adopted by its Board of Directors, appropriated the sum of One Hundred Thousand Dollars ($100,000.00) to its attorneys to be used by them for defense and resistance of said association against the malicious, vengeful and unauthorized attacks upon it which it knew would be made by the defendants John H. Fahey and A. V. Ammann and in furtherance of said appropriation, it caused to be issued to the said Robert H. Wallis, one of its attorneys, a cashier's check for Fifty Thousand Dollars ($50,000.00).

described in Cross-claim for interpleader of said Robert H. Wallis on file in this action, and now before this Honorable Court.

That said defendants John H. Fahey and A. V. Ammann have no interest in, title to, or claim upon, said cashier's check and the funds it represents, and that the said check and the said funds are held by the said Robert H. Wallis for the purposes for which they were appropriated.

That said defendants John H. Fahey and A. V. Ammann have, and are, using the fact of the making of said appropriation as a pretext to justify their malicious seizure of the said Long Beach Federal Savings and Loan Association and are seeking to prevent said Robert H. Wallis from using said funds for the purpose for which they were appropriated by said defendant Long Beach Federal Savings and Loan Association.

XII

That defendant and cross-claimant Long Beach Federal Savings and Loan Association is informed and believes and therefore alleges, that it was, and is, the intention of the defendants, John H. Fahey and A. V. Ammann, unless prevented and restrained by this Honorable Court from so doing, to merge and dissolve and com-ingle the assets, cash, securities, notes, deeds of trust, real property and other properties and assets of the defendant Long Beach Federal Savings and Loan Association into and with various other financial organizations in an effort to break up and dissipate this association, Long Beach Federal Savings and Loan Association, its membership and organization by forcing its members to become members of other financial institutions or associations and to accept in lieu of their present membership in defendant Long Beach Federal Savings and Loan Association interest shares or certificates in other financial corporations, associations or institutions, the names of which are as yet unknown to defendant Long Beach Federal Savings and Loan Association. That when the defendants John H. Fahey and A. V. Ammann seized, confiscated and destroyed the Federal Home Loan Bank of Los Angeles, as herein elsewhere alleged, as part of their said plan and scheme of destruction of said Federal Home Loan Bank

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of Los Angeles, the said defendants John H. Fahey and A. V. Ammann purported to merge it and its forty-three million dollars ($43,000,000.00) in assets into the Federal Home Loan Bank of Portland, and to transfer the said assets so merged to the new bank, Federal Home Loan Bank of San Francisco, which said defendants John H. Fahey and A. V. Ammann claimed they had created as the successor to the said Federal Home Loan Bank of Los Angeles. That by such merger, the said defendants John H. Fahey and A. V. Ammann pretended to have discharged and terminated the authority of the Board of Directors and elected officers of the said Federal Home Loan Bank of Los Angeles and pretended and purported to have caused all of the stockholders of the Federal Home Loan Bank of Los Angeles without any consent or action whatsoever on said stockholder's part to have become stockholders of and members of the Federal Home Loan Bank of San Francisco. The defendant Long Beach
334 Federal Savings and Loan Association alleges that the same general plan or scheme of destruction and merger as was used by defendants John H. Fahey and A. V. Ammann in the Federal Home Loan Bank of Los Angeles confiscation was, and is, intended by them as their plan to dispose of this defendant Long Beach Federal Savings and Loan Association. That defendant Long Beach Federal Savings and Loan Association has no plain, speedy, adequate or other remedy at law and unless said defendants John H. Fahey and A. V. Ammann are prevented and restrained by this Honorable Court from carrying out their plans of destruction and merger, said Long Beach Federal Savings and Loan Association, its shareholder members, property and assets will suffer great and irreparable damage from the acts of said defendants, and each and all of them.

Wherefore, defendant and cross-claimant Long Beach Federal Savings and Loan Association prays judgment against the defendants, and each and all of them, as follows:

1. That the defendants, John H. Fahey and A. V. Ammann, and all other defendants, be ordered and directed to return to defendant and cross-claimant Long Beach Federal Savings and Loan Association, and its officers

and directors, each, every and all parcels and pieces of the real and personal property, records, files, books and every other thing whatsoever, seized by them from said Long Beach Federal Savings and Loan Association.

2. That the defendants John H. Fahey and A. V. Ammann, and all other defendants, be ordered and directed to make, execute and deliver to defendant and cross-claimant Long Beach Federal Savings and Loan Association, a detailed, itemized and specific statement and list, particularly setting forth in detail each and all of the cash, securities, notes, deeds of trust, contracts, bonds, books, records, files, accounts and real and personal property, and every other thing whatsoever, which they
335 seized and took from the said defendants Long Beach Federal Savings and Loan Association.

3. That the possession, management, control and operation of the business of said association be ordered by this Honorable Court returned by said defendants John H. Fahey and A. V. Ammann and all other defendants to said defendant Long Beach Federal Savings and Loan Association and its officers and management.

4. That said defendants John H. Fahey and A. V. Ammann disclose and account with defendant Long Beach Federal Savings and Loan Association as to all transactions, dealings, disbursements, and other acts of said defendants John H. Fahey and A. V. Ammann in connection with, or upon said property and assets of defendant Long Beach Federal Savings and Loan Association, which they have seized as hereinbefore alleged.

5. That each and every act, order, decree, directive or other action of the said defendants John H. Fahey and A. V. Ammann, including the purported appointment of said A. V. Ammann as Conservator and his acts as such, be declared unconstitutional, illegal and void by this Honorable Court.

6. That orders be made enjoining and restraining the said defendants, and each and all of them, from making any transfers, assignments, conveyances, mergers or other disposition of the assets, securities, cash, properties, of defendant Long Beach Federal Savings and Loan Association, except such as may be made under the approval and authorization of this Honorable Court.

That said defendants, John H. Fahey and A. V. Ammann, and their deputies and employees, and each and all of them, be enjoined and restrained from any further destructive actions against said Long Beach Federal Savings and Loan Association, and particularly from any hearings before themselves, with particular reference to the purported hearing said defendants have set for July 3rd, 1946.

336 That defendants, John H. Fahey and A. V. Ammann be ordered and enjoined to cease and desist from all further attacks upon, or interference with the management, business and affairs of the Long Beach Federal Savings and Loan Association.

7. That this Honorable Court issue an order to show cause to each and all of said defendants requiring them to show cause upon specified dates why preliminary injunctions should not be made enjoining and restraining them, and each of them, during the pendency of this action, from doing any of the acts from which defendant and cross-claimant Long Beach Federal Savings and Loan Association prays relief in this action, and that such preliminary injunctions be continued in force during the pendency of this action and on final judgment that each and all of said injunctions be made permanent.

8. That the said notes, deeds of trust, money, payments, etc., including those deposited or hereafter to be deposited, in the Registry of this Honorable Court, and including the eight thousand ($8,000) which defendant Title Service Company was unable to deposit, be ordered, adjudged and decreed to be the property of, and to belong to, defendant Long Beach Federal Savings and Loan Association.

9. That said notes, deeds of trust, money, property, and each and all of the same, be ordered, adjudged and decreed by this Honorable Court to be delivered to said defendant Long Beach Federal Savings and Loan Association by any and all other defendants who may have physical possession or control of the same.

10. That the defendants John H. Fahey and A. V. Ammann have no right, claim or demand to said check for Fifty Thousand Dollars ($50,000.00) (or the fund it represents) deposited by defendant Robert H. Wallis

in the Registry of this Honorable Court; that upon application to it that this Honorable Court order and direct the payments of various portions of said check and the fund it represents towards the expenses
337 including attorney fees, Court costs, transcript charges and various other expenses necessary and required to defend said association from the attacks of said defendants John H. Fahey and A. V. Ammann.

11. That defendant Long Beach Federal Savings and Loan Asseociation recover its costs and expenses incurred herein;

12. And for such other and further relief as may seem just and proper to the Court in the premises.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant and Cross-Claimant Long Beach Federal Savings and Loan Association.

[*Duly sworn to by T. A. Gregory; jurat omitted in printing.*]

338 *Exhibit "B"*

Federal Home Loan Bank Administration

Order No. 5254

MAY 20, 1946.

Whereas, it has been determined that the Long Beach Federal Savings and Loan Association, Long Beach, California:

is conducting its business in an unlawful manner;
is conducting its business in an unauthorized manner;
is conducting its business in an unsafe manner;
has a management which is unsafe to manage a Federal Savings and Loan Association;
has a management which is unfit to manage a Federal Savings and Loan Association;
is pursuing a course that is jeopardizing the interests of its members;
is pursuing a course that is jeopardizing the interests of its creditors;

is pursuing a course that is jeopardizing the interests of the public;

is pursuing a course that is injurious to the interests of its members;

is pursuing a course that is injurious to the interests of its creditors; and

is pursuing a course that is injurious to the interests of the public; and

Whereas, it has been determined to be in the interest of said association, its members, creditors, and the public to appoint a conservator to take possession of said association and to conserve its assets pending further disposition of said association and its affairs:

Now, therefore, A. V. Ammann is hereby appointed Conservator for the Long Beach Federal Savings and Loan Association, Long Beach, California, to take possession of said association and to conserve its assets pending further disposition of said association and
339 its affairs; and, as such Conservator, to have and exercise all the powers and rights, enjoy all the privileges, and assume and perform all the duties and responsibilities of his office accorded or imposed by law, the Rules and Regulations for the Federal Savings and Loan System, and orders issued by the Federal Home Loan Bank Administration, or otherwise.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on May 20, 1946.

A. V. AMMANN,
Assistant Secretary.

340 *Exhibit "A"*

Statement of condition

Long Beach Federal Savings and Loan Association as of April 30, 1946

Assets:		
Direct reduction loans		$12,418,040.91
Accrued interest receivable		3,915.56
Loans secured by shares		156,470.10
Real estate sold on contract		2,217.13
Stock in Federal Home Loan Bank		341,700.00
United States Government obligations		11,938,690.85
Accrued interest on investments		101,717.26
Cash on hand and in banks		808,826.61
Office building (less depreciation)		116,715.89
Furniture, fixtures and equipment (less depreciation)		28,780.22
Drafts receivable		24,915.04
Accounts receivable		1,612.00
Total Assets		25,943,601.57
Liabilities:		
Savings share accounts		$22,502,119.93
Borrowed money		1,000,000.00
Interest accrued		3,403.16
Accounts payable		9,275.59
Loans in process		937,741.12
Advance payments by borrowers for taxes, insurance, etc.		154,013.32
Unapplied mortgage credits		46,386.51
Other liabilities		975.67
United States war bonds		1,800.00
Reserves and undivided profits:		
Unearned profit on real estate sold	266.64	
Income collected in advance	1,221.96	
Uncollected interest	3,915.56	
Reserve for unearned interest	411.72	
Federal insurance	179,300.00	
Contingencies (general reserves)	500,000.00	
Undivided profits	221,777.81	
Current profits	380,992.58	
		1,287,886.27
Total liabilities		25,943,601.57

341 Received copy of the within Answer and Cross-Claim this day of June, 1946.

RONALD WALKER,

Asst. U. S. Atty., Attorney for Defendant, A. V. Ammann individually and A. V. Ammann, as Conservator for Long Beach Federal Savings and Loan Association.

346 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Third party complaint (for return of property. Accounting and for declaratory relief)

Filed July 1, 1946

347 Plaintiffs have filed against the defendants John H. Fahey, et al, and also against the defendant Long Beach Federal Savings and Loan Association, a Complaint for return of property, for injunction and for declaratory relief and for account, a copy of which complaint is hereto attached and marked Exhibit "A".

I

(a) This action arises under the Fifth Amendment of the Constitution of the United States of America in that Plaintiffs have been deprived of property in excess of Twenty-six Million Dollars ($26,000,000.00), without due process of law as hereinafter more fully appears.

(b) This action also arises under and involves the interpretation and effect of the following Acts of Congress of the United States of America:

(1) "Home Owners Loan Act of 1933", as amended Public No. 43—73rd Congress—48 Statutes 132 (June 13, 1933—Chapter 64, Paragraph 1, 48 Statutes 128)

(2) "Federal Home Loan Bank Act", as amended Public No. 304—72nd Congress, (July 22, 1932, Chapter 522, Paragraph 1, 47 Statutes 725 and amendments thereto)

(3) "The National Housing Act"—Public No. 479 73rd Congress (June 27, 1934, Chapter 847, 48 Statutes 1246 and amendment thereto, and

(4) Regulations, rules and directives purportedly
348 made and adopted pursuant to and under each and all of said acts.

(c) This action involves amounts in controversy in excess exclusive of interests and costs, of the sum of Three Thousand Dollars ($3,000.00) to wit: involves amounts in controversy in excess of Twenty-six Million Dollars ($26,000,000.00)

(d) This action also seeks injunctive relief to prevent the wrongful dissipation of private property in amounts in excess of Twenty-six Million Dollars ($26,000,000.00), wrongfully taken without due process of law and to restrain the enforcement, operation and execution, in whole or in part, of Acts of Congress, upon the ground that such Acts or parts thereof, are repugnant to the Constitution of the United States, and Amendment V thereof, and therefore pursuant to the provisions of Section 380 (a) of Title 28 of the Federal Judicial Code, the Plaintiffs respectfully request the senior Circuit Judge of the Ninth Judicial Circuit to immediately designate three (3) Judges to comprise the Court to hear this action as in said Section 380 (a) provided.

This action also arises under Title 28, Section 41, subdivision 26, subsections a, b, c, d, and e, of the Federal Judicial Code. Defendant Title Service Company, a corporation, is a citizen of the State of California, defendants, John H. Fahey and A. V. Ammann are, defendant is informed and believes, citizens of the District of Columbia, which is other than the State of California. The amount in controversy in the principal action, exceeds Five Hundred Dollars ($500.00), and defendant is informed and believes said sum amounts to approximately Twenty-Six Million Dollars ($26,000,000.00). The amount involved in defendant Title Service Company's Cross-claim exceeds Five Hundred Dollars ($500.00), to wit: is approximately the sum of Twelve Million Dollars ($12,000,000.00)

(e) That the defendant, Long Beach Federal Savings and Loan Association, is a mutual thrift association, a citizen of the State of California, with its principal place of business in the City of Long Beach, County of Los Angeles, State of California, and is, therefore, a resident of the district wherein this Honorable Court is situated.

(f) This action also arises under Title 28, Section 41, subdivision 26, subsections a, b, c, d, and e, of the Federal Judicial Code. Defendant Robert H. Wallis, is a Citizen of the State of California, defendants John H. Fahey and A. V. Ammann are, this defendant is informed and

believes, citizens of the District of Columbia, which is other than the State of California.

That the amount involved in defendant Robert H. Wallis' cross-claims exceeds Five Hundred Dollars ($500.00) to wit: is approximately in the sum of Fifty Thousand Dollars ($50,000.00)

This action also arises under Title 28, Section 118 of the Federal Judicial Code. Certain of the defendants cannot be found within the district of this Honorable District Court of the United States and the action involves claims to, and the removal of clouds, liens and encumbrances upon over Twenty-six Million Dollars ($26,000,000.00) worth of real and personal property situated and located within the District and jurisdiction of this Honorable Court.

II

Defendant and third party plaintiff, Long Beach Federal Savings and Loan Association is a mutual thrift association organized and existing under and by virtue of the laws of the United States and having its principal place of business in the City of Long Beach, County of Los Angeles, State of California, and is a citizen of, domiciled in, and a resident of the County of Los Angeles, State of California.

That the defendant Federal Home Loan Bank of Los Angeles was, and is a Federal Home Loan Bank organized and existing under and by virtue of the laws of the United States with its principal place of business in the County of Los Angeles, State of California, domiciled therein and a resident thereof.

Defendant and third party plaintiff is informed and believes and therefore alleges:

350 (a) That the original defendant, John H. Fahey, et al., claims and purports to be the Federal Home Loan Bank commissioner exercising such authority as is conferred by law upon such commissioner.

(b) That the defendant Federal Home Loan Bank of Portland is a Federal Home Loan Bank existing under and by virtue of the laws of the United States having a place of business in the City of San Francisco, State of

California, and also having its principal place of business in the City of Los Angeles, State of California.

(c) That the defendant, Federal Home Loan Bank of San Francisco is a Federal Home Loan Bank existing under and by virtue of the laws of the United States, having a place of business in the City of San Francisco, State of California, and having its principal place of business in the City of Los Angeles, State of California.

That due to the facts and circumstances hereinafter alleged, defendant and third party plaintiff Long Beach Federal Savings and Loan Association is uncertain as to the exact status of the defendants, Federal Home Loan Bank of San Francisco and Federal Home Loan Bank of Portland and their principal places of business but that defendant and third party plaintiff alleges that one of the three defendants Federal Home Loan Bank, ie., Portland, San Francisco, or Los Angeles, has many millions of dollars of assets owned by, and belonging to, defendant and third party plaintiff Long Beach Federal Savings and Loan Association.

III

That prior to the 29th day of March, 1946, the defendant Federal Home Loan Bank of Los Angeles had in its possession and control as custodian and trustee for defendant and third party plaintiff Long Beach Federal Savings and Loan Association approximately five to six million dollars in United States government bonds, many of which were bearer bonds. That defendant and third party plaintiff Long Beach Federal Savings and Loan Association was and is the owner of Three Thousand Four Hundred and Seventeen (3,417) shares of the capital stock of the defendant, Federal Home Loan Bank of Los Angeles of the par value of One Hundred Dollars ($100.00) each with a total par value of Three Hundred Forty-One Thousand and Seven Hundred Dollars ($341,700.00). That as the owner of such stock, defendant and thirty party plaintiff Long Beach Federal Savings and Loan Association also owned a fractional undivided share in the surplus, reserves and other assets of said defendant, Federal Home Loan Bank of Los

Angeles, which share of said surplus defendant and third party plaintiff Long Beach Federal Savings and Loan Association is informed and believes and therefore alleges amounted to approximately Forty Thousand Dollars ($40,000.00).

That on or about the 29th day of March, 1946, the defendants in the principal action, John H. Fahey and A. V. Ammann, purported and attempted illegally, and without authority and without right or justification whatsoever, to seize and merge the defendant Federal Home Loan Bank of Los Angeles, which then had total assets of approximately Forty-three Million Dollars ($43,000,000.00) into and with the Federal Home Loan Bank of Portland, which defendant and third party plaintiff Long Beach Federal Savings and Loan Association, is informed and believes and therefore alleges had assets of approximately Nine Million Dollars ($9,000,000.00).

IV

That said original defendants, John H. Fahey and A. V. Ammann, purported to and claimed to have merged and dissolved the identities of defendants Federal Home Loan Bank of Los Angeles and Federal Home Loan Bank of Portland into a new institution consisting of the Federal Home Loan Bank of San Francisco under the management and direction of the former officers and directors of the Federal Home Loan Bank of Portland and that said original action defendants John H. Fahey and A. V. Ammann, by their various orders and decrees attempted and purported to make defendant and third party plaintiff Long Beach Federal Savings and Loan Association a member of, a stockholder in, and connected with the purported Federal Home Loan Bank of San Francisco.

That defendant and third party plaintiff, Long
352 Beach Federal Savings and Loan Association has never surrendered its stock certificates or other rights in the Federal Home Loan Bank of Los Angeles, nor has it in any other way participated in the affairs or business of the Federal Home Loan Bank of Portland, or the Federal Home Loan Bank of San Francisco.

V

That defendant and third party plaintiff Long Beach Federal Savings and Loan Association is informed and believes and therefore alleges that each and all of the acts of the original defendants, John H. Fahey and A. V. Ammann in attempting to seize and destroy the Federal Home Loan Bank of Los Angeles, merge it into the Federal Home Loan Bank of Portland and create the new entity Federal Home Loan Bank of San Francisco, were, and are, illegal, void, unconstitutional and beyond the power and authority of said original defendants, John H. Fahey and A. V. Ammann and each of them.

VI

That the President of the third party plaintiff Long Beach Federal Savings and Loan Association, is T. A. Gregory, who was also a member of the Board of Directors of defendant Federal Home Loan Bank of Los Angeles. That he was extremely active among the stockholders of said seized Federal Home Loan Bank of Los Angeles in their resistance to the said unlawful and unconstitutional and arbitrary acts of original defendants, John H. Fahey and A. V. Ammann, in making said seizure of said Federal Home Loan Bank of Los Angeles as a result and consequence of which the said original defendants, John H. Fahey and A. V. Ammann, on the 20th day of May, 1946, unlawfully, arbitrarily, illegally and without right or authority so to do physically seized possession of defendant and third party plaintiff Long Beach Federal Savings and Loan Association and its securities, assets and property, which were then worth in excess of Twenty-six Million Dollars ($26,000,000.00).

VII

That the said original defendant, John H. Fahey, attempted and purported to appoint the original defendant, A. V. Ammann as conservator for defendant and third party plaintiff, Long Beach Federal Savings and Loan Association. That by such seizure and confiscation of the property, files, records, receipts and assets of the said defendant and third party plaintiff Long Beach

Federal Savings and Loan Association, the said defendants, John H. Fahey, and A. V. Ammann, obtained possession of and control of all of the receipts, acknowledgments of delivery and other evidences of title to and ownership by the said defendant and third party plaintiff Long Beach Federal Savings and Loan Association of the said Three Thousand Four Hundred and Seventeen (3,417) shares of the capital stock of the Federal Home Loan Bank of Los Angeles, of the approximately five to six million dollars in bonds then in possession of the defendants Federal Home Loan Bank of Los Angeles, Federal Home Loan Bank of Portland, Federal Home Loan Bank of San Francisco or one or all of said defendants.

That the seizure of said receipts from the possession of third party plaintiff and defendant Long Beach Federal Savings and Loan Association is why more specific data cannot be alleged in this complaint as to the exact amount, serial numbers and designations of the United States government bonds hereinbefore referred to.

VIII

That since his purported appointment as conservator, the defendant A. V. Ammann, and the defendant John H. Fahey have transferred, assigned, sold, conveyed, delivered and otherwise dealt with many millions of dollars worth of notes, deeds of trust, bonds, securities, assets and property of the defendant and third party plaintiff Long Beach Federal Savings and Loan Association, possession and control of which they unlawfully and wrongfully obtained by the said unconstitutional seizure. That defendant and third party plaintiff is informed and believes and therefore alleges that they, the said John H. Fahey and A. V. Ammann, have made transactions with the defendants, Federal Home Loan Bank of Los Angeles,
Federal Home Loan Bank of San Francisco, and
354 Federal Home Loan Bank of Portland, and with
each and all of them, or with one or more of them, in which the said defendants John H. Fahey and A. V. Ammann have withdrawn into their own possession all or part of the said five to six million dollars in United States government bonds which were originally held by the said defendant Federal Home Loan Bank of Los

Angeles and which were owned by, and the property of, defendant and third party plaintiff Long Beach Federal Savings and Loan Association and have also sold, assigned, transferred and delivered some five to seven million dollars in face value of notes and deeds of trust to one or more of the defendants, Federal Home Loan Bank of Los Angeles, Federal Home Loan Bank of Portland and Federal Home Loan Bank of San Francisco, the makers of which notes are each and all domiciled in, and residents of, the County of Los Angeles, State of California, that the deeds of trust securing each and all of said notes convey the title to many thousands of parcels of real property, each and all of which are situated in the County of Los Angeles, State of California. That the trustee on each and all of said deeds of trust is Title Service Company, a California corporation, having its principal place of business in the City of Long Beach, County of Los Angeles, State of California, and that each and all of said notes and deeds of trust are made payable at the home office of said defendant and third party plaintiff Long Beach Federal Savings and Loan Association, in the City of Long Beach, County of Los Angeles, State of California.

IX

That the defendants Federal Home Loan Bank of Portland and Federal Home Loan Bank of San Francisco, purport to act as the successors of defendants Federal Home Loan Bank of Los Angeles and now have the physical possession and control of the said five to six million dollars in bonds and said five to seven million dollars in notes and deeds of trust, all of which they hold as custodian for and as trustee for the true owner of said notes and deeds of trust and said bonds, to-wit: the defendant and third party plaintiff Long Beach Federal Savings and Loan Association.

355

X

That each and all and every act, transaction, assignment, transfer and conveyance of the original defendants John H. Fahey and A. V. Ammann with and to the third party defendants Federal Home Loan Bank of Los An-

geles, Federal Home Loan Bank of Portland, and Federal Home Loan Bank of San Francisco, are and were illegal, void and conveyed no title, authority or ownership whatsoever, and did not convey or transfer any right or title of defendant third party plaintiff Long Beach Federal Savings and Loan Association.

XI

That a bona fide controversy and dispute exists between defendants and third party plaintiff Long Beach Federal Savings and Loan Association and third party defendants, as follows:

Defendants, and each of them, claim that they hold the property of defendant and third party plaintiff, Long Beach Federal Savings and Loan Association under the authority of and for the account of defendants John H. Fahey and A. V. Ammann and defendant and third party plaintiff Long Beach Federal Savings and Loan Association claims that such property, and each and all of the same, is owned by and belongs to it, and that it is entitled to the immediate possession thereof.

That a further controversy and dispute also exists in that third party defendants claim that defendant and third party plaintiff is a member of and stockholder of and connected with defendant Federal Home Loan Bank of San Francisco and defendant and third party plaintiff Long Beach Federal Savings and Loan Association contends that it is still a member of, stockholder of, and connected with, third party defendant Federal Home Loan Bank of Los Angeles. That each and both of said contentions of defendant and third party plaintiff Long Beach Federal Savings and Loan Association and of defendants are conflicting and irreconciliable and cannot both be correct.

Wherefore, defendant and third party plaintiff,
356 Long Beach Federal Savings and Loan Association prays judgment, against the defendants Federal Home Loan Bank of Los Angeles, Federal Home Loan Bank of Portland, and Federal Home Loan Bank of San Francisco, as follows:

1. That said defendants, and each of all of them, account with defendant and third party plaintiff Long Beach

Federal Savings and Loan Association, for and as to each, every and all assets, bonds, notes, deeds of trust, security, and other prorperty belonging to said defendant and third party plaintiff Long Beach Federal Savings and Loan Association, which is now or has ever been in the possession, custody or control of said defendants, or any of them.

2. That this Honorable Court order said defendants and each and all of them to return and deliver to defendant and third party plaintiff Long Beach Federal Savings and Loan Association, each, every and all of its securities, bonds, notes, deeds of trust, and other property in the custody or order the control of the said defendants, or each, or any of them.

3. That this Court adjudge and declare which of said defendants, if any, is the Federal Home Loan Bank in which defendant and third party plaintiff Long Beach Federal Savings and Loan Association owns three thousand four hundred and seventeen (3,417) shares of the capital stock, and that this Court adjudge and declare the amount of surplus owned by defendant and third party plaintiff Long Beach Federal Savings and Loan Association, in whichever Federal Home Long Bank this Court determines it to be a stockholder.

4. That this Court adjudge and declare that each and every transfer, assignment, conveyance, transaction of said original defendants John H. Fahey and A. V. Ammann concerning property of defendant and third party plaintiff Long Beach Federal Savings and Loan Association, with and to the third party defendants Federal Home Loan Bank of Los Angeles, Federal Home Loan Bank of Portland, Federal Home Loan Bank of San Francisco, were, and are, unauthorized, illegal and void, and conveyed no title or interest whatsoever.

357 5. That this Honorable Court make its declaratory judgment adjudging and declaring which of the three third party defendants, Federal Home Loan Bank of Los Angeles, Federal Home Loan Bank of Portland, Federal Home Loan Bank of San Francisco, is actually in existence and has the property and assets of defendant and third party plaintiff Long Beach Federal Savings and Loan Association.

6. That defendant and third party plaintiff recover its costs of action incurred herein.

7. And for such other and further relief as to the Court may seem just and proper in the premises.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for defendant and third party plaintiff, Long Beach Federal Savings and Loan Association.

[*Duly sworn to by T. A. Gregory; jurat omitted in printing.*]

377 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order setting the 15th day of July 1946, for hearing, by court composed of three judges, of the plaintiffs' motions for preliminary injunctions to restrain the merging or commingling of assets and to restrain the holding of administrative hearing, and continuing temporary restraining order in force

Filed July 1, 1946

From reading the Verified Complaint, Affidavits, Pleadings, Motions, Records on file herein, and

It appearing therefrom and otherwise, that there is reason to believe that the defendants, or some of them may dissipate and break up the Long Beach Federal Savings and Loan Association, its membership shares, and organization, by merging, consolidating, reorganizing or uniting said Association, or commingling the said Association's assets, membership shares, or members with other organizations, corporations, associations or institutions, and that there would thereby be caused immediate and irreparable injury, loss and damage to the plaintiffs, and other shareholder members of said Association; and

It further appearing that the plaintiffs in said
378 action have made and/or submitted to the Court, the following:

1. Motion for Preliminary Injunction to Enjoin and Restrain the defendant from commingling, merging, consolidating or reorganizing the said Long Beach Federal Savings and Loan Association, and its assets with other institutions; and

2. Motion for Preliminary Injunction to Restrain the defendants from holding an Administrative Hearing; and

It further appearing to this Court that both of said motions for injunction involve the restraining, enforcement, operation, execution or setting aside in whole or in part, of an Act of Congress, upon the grounds that such Act, or a part thereof, or Rules or Regulations made thereunder is, or are, repugnant to the Constitution of the United States of America, and for good cause shown;

Now therefore, it is hereby ordered, that the plaintiffs' motion for preliminary injunction re restraining the defendants from merging the said Long Beach Federal Savings and Loan Association, and the plaintiffs' motion for preliminary injunction to restrain the holding of an administrative hearing, together with all other Motions in this matter, remaining unheard and undecided, which have heretofore been noticed for July 1, 1946, be, and the said Motions, and each of them is and are hereby continued to and set for hearing by a Court composed of three judges, to a time commencing at 2:00 o'clock P.M., on the 15 day of July 1946, in the Courtroom of the Honorable Peirson M. Hall, Judge of the United States District Court, in the Federal Building, at Los Angeles, California.

It is further ordered that all such documents shall be filed herein, in quadruplicate for consideration by a Court composed of three judges.

It is further hereby ordered, upon the findings above made, and for the reasons above set forth, that the Temporary Restraining Order heretofore made on the 27th day of May, 1946, restraining the defendant from consolidating, merging or commingling the said Long Beach Federal Savings and Loan Association and/or its assets be, and it hereby is continued in full force and effect, until the hearing of, and until the final determination of the said Motion for Preliminary Injunction

restraining against so merging, or until further Order of this Court.

Dated at Los Angeles, this 1st day of July 1946.

Peirson M. Hall,
PEIRSON M. HALL,
Judge of the District Court of the United States.

380 Received copy of the within Order this 1st day of July 1946.

CHARLES K. CHAPMAN,
Attorney for Deft. Long Beach Federal Savings & Loan Assn.

Received copy of the within Order this 1st day of July 1946.

RONALD WALKER,
Asst. U. S. Atty.; Attorney for Deft. Ammann.

Received copy of the within Order this 1st day of July 1946.

H. O. WALLACE,
Atty. for Def. & Cross-Complainant Title Service Co.

Received copy of the within Order this 1st day of July 1946.

RAYMOND TREMAINE,
Atty. for Def. & Cross-Complainant Robert H. Wallis.

Received copy of the within Order.

F. HENRY NECASEK,
Atty. for Intervener.

381 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of service by mail of order setting the 15th day of July 1946, for hearing, by court composed of three judges, of the plaintiffs' motions for preliminary injunctions to restrain the merging or commingling of assets and to restrain the holding of administrative hearing, and continuing temporary restraining order in force.

Filed July 8, 1946

Fay Dealey, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 1009 Pacific Southwest Building, 215 W. 6th St., Los Angeles 14, California, that on the 3rd day of July, 1946, affiant served the Order Setting the 15th Day of July, 1946, for Hearing by Court composed of Three Judges of the Plaintiffs' Motions for Preliminary Injunctions to Restrain the Merging or Commingling of Assets and to Restrain the Holding of Administrative Hearing, and continuing Temporary Restraining Order in Force on the defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board and as Commissioner and Administrator of the Federal Home Loan Bank Administration, by placing a true copy thereof in an envelope addressed as

382 follows: Mr. John H. Fahey, Federal Home Loan Bank Commissioner, Federal Home Loan Bank Building, Washington, D. C., and then by sealing said envelope and depositing the same, with registered postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the persons by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, and there is regular communica-

tion by mail between the place of mailing and the place so addressed.

Fay Dealey,
FAY DEALEY.

Subscribed and sworn to before me this 3rd day of July, 1946.

[SEAL] MAXINE LAUREL BERWEILER,
Notary Public in and for said County and State.

My commission expires Jan. 10, 1950.

383 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion for temporary restraining order to enjoin the holding of an administrative hearing
Filed July 1, 1946

Come now, the Plaintiffs, in the above entitled action and move this Honorable Court for a Temporary Restraining Order to Enjoin and Restrain the defendants, John H. Fahey, individually, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, individually, and A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, and any and all of their agents, employees, servants, Conservators, hearing officers, and subordinates, and each and all of them from, directly or indirectly, during the pendency of the above entitled action, and until the hearing and final determination of the now pending Motion of these plaintiffs for Preliminary Injunction to Restrain the Holding of an Administrative Hearing, or until further Order of this Honorable Court, from proceeding with,
holding, or attempting to hold any hearing or
384 hearings, pursuant to Order No. 5309 of the Federal Home Loan Bank Administration, or at all, to determine, or attempt to determine, adjudicate, or attempt to adjudicate, any of the questions, issues, or matters, which are now, or may hereafter, be pending before this Honorable Court in the above entitled action without the

further written order of this Honorable Court being first had and obtained.

This Motion is made upon the grounds, that unless restrained from so doing, the defendants, John H. Fahey, as Chairman of the Federal Home Loan Bank Board and as Administrator of the Federal Home Loan Bank Administration and the defendant, A. V. Ammann, his purported Conservator for the Long Beach Federal Savings and Loan Association, by and through their representatives, agents, subordinates and unnamed hearing officers, propose to hold a purported Administrative Hearing, commencing on July 3, 1946, pursuant to their own Order No. 5309 of the Federal Home Loan Bank Administration, and proposed to take such testimony as they see fit for submission to the Federal Home Loan Bank Administration and to John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as Administrator of the Federal Home Loan Bank Administration for determination by himself, as to whether or not he, himself, acted properly and within his authority and jurisdiction in having appointed his co-defendant, A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, and in having authorized, condoned, consented to and approved the seizure, without prior notice or prior hearing, of the said Long Beach Federal Savings and Loan Association and its Twenty-six Million ($26,000,000.00) Dollars of assets.

That the provisions of the Federal Acts, under which the above named defendant and the Federal Home Loan Bank Administration purport to act, and the rules, regulations and directions purportedly made and adopted pursuant to and under each and all such Federal Acts, are unconstitutional and repugnant to the Constitution of the United States and Amendments IV and V thereof, and the attempt to delegate legislative and judicial authority to the Federal Home Loan Bank Administration and its Administrator and Commissioner, the defendant, John H. Fahey, was ineffectual, incomplete and improper and unconstitutional attempt to delegate such judicial and legislative authority.

That the said proposed administrative hearing would not be conducted in a fair and impartial forum for the

hearing of the matters in controversy, because the defendant, John H. Fahey, as Federal Home Loan Bank Administrator, in passing upon, adjudicating and determining the propriety and validity of his own acts and the acts of his subordinates in the Federal Home Loan Bank Administration, performed and done pursuant to his own direction and authority, would not be a fair and impartial adjudicator, as the Defendant; John H. Fahey and other members of his Staff in the Federal Home Loan Bank Administration have demonstrated by their actions and statements, that they will be influenced in such adjudication by bias and prejudice, and that they have already decided and determined the issues upon which they propose to hold said administrative hearing.

That the questions proposed to be heard and determined by such Federal Home Loan Bank Administration at the said purported hearing, to wit: the question "as to why the Conservator should not have been appointed and why an order should be entered by the Federal Home Loan Bank Administration, discharging the Conservator" are questions involving the constitutionality of the rules, regulations and acts or parts thereof, under which said Conservator was allegedly appointed and which same questions are here raised in this litigation now pending before this Honorable Court and should properly be heard by a Court composed of Three Judges, pursuant to the provisions of 380 (a) of Title 28 of the Judicial Code.

That these parties, Plaintiffs, are not parties to
386 said purported administrative hearing, and that there are various other parties to this present pending litigation, to wit: interpleading parties, who are not parties to said purported administrative hearing, yet whose rights and interests will be seriously affected by any attempted or purported decision or determination which might be so allegedly made by the defendant, John H. Fahey, as Federal Home Loan Bank Commissioner, Administrator, or Chairman of the Board, or which might be made or attempted to be made by any person in said Federal Home Loan Bank Administration or its agents, employees, servants, subordinates, or hearing officers.

That the holding of said purported administrative hearing, the constitutionality of which is placed in question

by this pending action, would constitute a multiplicity of actions, be an encroachment and infringement upon the jurisdiction and authority of this Honorable Court, to hear and determine the questions, including the constitutional questions raised by this pending action and would cause immediate and irreparable damage and injury to these Plaintiffs and to the interests of the other approximately 16,000 shareholder members in the said Long Beach Federal Savings and Loan Association and would injure and damage the good-will and going concern value of said Association and its shareholder members, and the resultant publicity might start again a "run" of withdrawals from said Association, which might even exceed the "run" of withdrawals caused by the seizure of said Association by said defendant, A. V. Ammann, as purported Conservator, which said "run" within a comparatively short time, caused withdrawals in excess of Six Million ($6,000,000.00) Dollars.

This Motion is made and based upon the Verified Complaint, the Motion for Preliminary Injunction to Restrain the Holding of this Administrative Hearing, the Plaintiffs' Summary Statement of Pertinent Facts In re: Preliminary Injunction to Restrain the Holding of an Administrative Hearing, the excerpts from the testimony of these
387 defendants and others given under oath before the Select Committee of the House of Representatives, while holding a hearing investigating the Acts of Executive Agencies, which have exceeded their authority, upon Complaint of the Federal Home Loan Bank of Los Angeles, and upon the Affidavits, Points and Authorities, Papers, Pleadings, Records and Files in this action.

Dated this 21st day of July, 1946.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

5

388 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of Wyckoff Westover in Support of Motion for temporary restraining order to restrain the holding of administrative hearing

Wyckoff Westover, being first duly sworn, deposes and says:

That he is a member of the firm of Westover & Smith, Attorneys of Record for the Plaintiffs herein;

That on Friday, June 14, 1946, at about 4:30 P.M., there was served upon the firm of Westover & Smith, a Notice of Motion to Dismiss the above entitled action made upon behalf of the defendants, A. V. Ammann, individually, and as Conservator for the Long Beach Federal Savings and Loan Association, and that attached thereto, among other documents was a photostatic copy marked Exhibit "E" of what purports to be Order No. 5309 of the Federal Home Loan Bank Administration.

That neither the Plaintiffs, nor your affiant have ever been notified of the issuance of said purported
389 Order No. 5309; and that this was the first time that your affiant ever saw said Order No. 5309, or a copy thereof.

That from the reading of the photostatic copy of said purported Order No. 5309 of the Federal Home Loan Bank Administration, it appears that the said Federal Home Loan Bank Administration and the defendant, John H. Fahey, as Chairman of the Board of the Federal Home Loan Bank Board, and as Administrator, and Director thereof, or otherwise, and the said A. V. Ammann, defendant, as Conservator of the Long Beach Federal Savings and Loan Association, and/or otherwise, propose or contemplate the holding of an so-called hearing at Room 510, Chester Williams Building, 215 West Fifth Street, Los Angeles, California, on Wednesday the 3rd day of July, 1946, commencing at 10:00 o'clock in the forenoon, at which time, one of the defendants in this action, to wit:

The Long Beach Federal Savings and Loan Association, Long Beach, California, is invited to appear and show cause "why the Conservator should not have been appointed and why an Order should be entered by the Federal Home Loan Bank Administration discharging the Conservator."

That from the reading of said purported Order No. 5309, it would appear that the decision of said question is to be made by the same persons, to wit: the defendant, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and/or as Administrator of the Federal Home Loan Bank Administration, or his Conservator, A. V. Ammann, or appointee, and as such would simply be, a determination by himself, to wit: John H. Fahey, as to whether or not he, himself, John H. Fahey, acted properly and within the authority and jurisdiction of his office as Admin strator of the Federal Home Loan Bank Administration in having appointed his co-defendant, A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, and in having authorized the seizure without prior notice of the said Long Beach Federal Savings and Loan Association, and its $26,000,000.00 of assets.

That the questions proposed to be heard and determined by such Federal Home Loan Bank Administration at the said purported Administrative Hearing proposed to be held commencing July 3, 1946, involve the constitutionality of the Rules, Regulations and Acts or parts thereof, under which said Conservator, A. V. Ammann, was allegedly appointed and the same constitutional questions are here raised in this litigation, now pending before this Honorable Court, and are set to be heard by this Honorable Court composed of three judges, under the proceeding to be had, pursuant to the Provisions of Section 380 (a) of Title 28 of the Judicial Code.

That the Plaintiffs herein, have heretofore on June 20, 1946, duly filed their Notice of Motion for Preliminary Injunction to Restrain the Holding of this said Administrative Hearing, which said Motion for Preliminary Injunction has been duly set by this Honorable Court for Hearing to be held before a Court composed of three

judges, as required by the Provisions of Section 380 (a) of Title 28 of the Judicial Code, which said Hearing is to be held on the.....day of....., 1946, which is a date subsequent to July 3, 1946; and

That unless temporarily restrained from so doing, the defendants, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as Administrator of the Home Loan Bank Administration, and the defendant, A. V. Ammann, his purported Conservator for the Long Beach Federal Savings and Loan Association, by and through their representatives, agents, subordinates, and un-named hearing officers will proceed to hold the said purported Administrative Hearing, commencing on July 3, 1946, and may determine among themselves, as to whether or not they acted properly and whether or not it was within their authority and jurisdiction to have appointed A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, and in having authorized, consented to, and condoned the seizure without prior notice or hearing of the Long
391 Beach Federal Savings and Loan Association, and its $26,000,000.00 of assets; and

That the holding of said purported Administrative Hearing, the constitutionality of which is placed in question by this pending action, would constitute a multiplicity of actions, would be an encroachment and infringement upon the jurisdiction and authority of this Honorable Court to hear and determine the questions, including the constitutional questions raised by this pending action, and would cause immediate and irreparable damage and injury to these plaintiffs, and to the interests of the other shareholder members in the said Long Beach Federal Savings and Loan Association, who approximate in number 16,000.

That the hearing on these Plaintiffs' Motion for Preliminary injunction to Restrain the Holding of said Administrative Hearing would be a hearing upon a moot question, unless a Temporary Restraining Order is issued to restrain the holding of said proposed Administrative Hearing, until after the final determination and adjudication of the Plaintiffs' Motion for Preliminary Injune-

tion to Restrain the Holding of said Administrative Hearing.

Further your affiant sayeth not.

Wyckoff Westover,
(S.) WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

Subscribed and sworn to before me this 28 day of June 1946.

[SEAL]

Maxine Laurel Berweiler,
(S.) MAXINE LAUREL BERWEILER,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Jan. 10, 1950.

392 Received copy of the within motion this 1st day of July 1946.

RONALD WALKER,
Asst. U. S. Atty., Attorney for Deft. Ammann.

Received copy of the within motion this 1st day of July 1946.

RAYMOND TREMAINE,
Attorney for defendant & Cross-Complainant, Robert H. Wallis.

Received copy of the within motion this 1st day of July 1946.

H. O. WALLACE,
Atty. for Def. & Cross-Complainant, Title Service Co.

Received copy of the within motion this 1st day of July 1946.

CHARLES K. CHAPMAN,
Atty. for Long Beach Federal Savings and Loan Assn.

Received copy of the within motion 7/1/46.

F. HENRY NECASEK,
Atty. for Home Investment Co. of L. B.

393 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Restraining order re holding of administrative hearing
Filed July 1, 1946

Upon the reading of the Verified Complaint, Affidavits, Documents, Points and Authorities, Records and Pleadings on file herein, and it appearing that there is reason to believe that the defendants, or some of them, by or through their representatives, agents, subordinates, unnamed hearing officers, or employees, propose to hold an administrative hearing commencing on July 3, 1946, pursuant to Order No. 5309, of the Federal Home Loan Bank Administration, to take testimony and to determine and to adjudicate questions, issues and matters, which are now pending before this Court in this above entitled action, the determination of which questions, issues and matters, of necessity, involve the determination of the constitutionality of the rules, regulations and directives, made under and pursuant to certain Federal Acts, as well as the determination of the constitutionality of such Federal Acts, and as there are various parties and parties defendant, who have interplead in this action,

394 and who are not made parties to said administrative hearing, yet whose rights and interests, including rights and interests in a large number of parcels of real property in Southern California, would be affected by the holding of said administrative hearing and by the determination or the attempted determination of the matters therein considered; and, it further appearing

That to permit said administrative hearing to be held would constitute a duplication of actions and a multiplicity of suits for the hearing and determination of questions, issues and matters, including constitutional questions now pending in this action before this Court, and would cause immediate and irreparable injury to Plaintiffs and others.

It is hereby ordered that the defendants, John H. Fahey, individually, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, individually, A. V. Ammann, as purported Conservator of the

Long Beach Federal Savings and Loan Association, and any and all of their agents, employees, servants, conservators, hearing officers and subordinates, each, and all of them, be and they hereby are restrained and enjoined from, directly or indirectly, during the pendency of the above entitled action, and until the hearing and final determination of the now pending motion for Preliminary Injunction to restrain the holding of an administrative hearing, or until further Order of this Court, proceeding with, holding, or attempting to hold any hearing or hearings, pursuant to Order No. 5309, of the Federal Home Loan Bank Administration, or at all, to determine, adjudicate, or to attempt to adjudicate, any of the questions, issues or matters, which are now, or may hereafter be, pending before this Court in the above entitled action, without first obtaining the further written Order of this Court.

It is further hereby ordered, for the reasons above set forth, and for the further reason, that this Temporary Restraining Order has been granted without prior Notice of the Motion therefore, that the same shall expire at 6 o'clock P.M., on the 15th day of July, 1946, as required by the provisions of Section 380 (a) and 381 of Title 28 of the Judicial Code, unless prior thereto, for good cause shown, this Order is extended in accordance with the provisions of said Sections, and in accordance with the provisions of Rule 65, Subdivision (b) of the Federal Court Rules.

Dated at Los Angeles, this 1 day of July, 1946.

PEIRSON M. HALL,
Judge of the District Court
of the United States.

Bond as security in accordance with the Provisions of Rule 65, Subdivision (c) is hereby fixed in the sum of $2500.00.

Dated at Los Angeles, this 1st day of July 1946.

PEIRSON M. HALL,
Judge of the District Court
of the United States.

397 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of service by mail of motion for temporary restraining to enjoin the holding of an administrative hearing and supporting points and authorities and supporting affidavit; and restraining order re holding of an administrative hearing

Fay Dealey, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 1009 Pacific Southwest Building, 215 W. 6th Street, Los Angeles 14, California, that on the 2nd day of July, 1946, affiant served the Motion for Temporary Restraining Order to Enjoin the Holding of an Administrative Hearing and Supporting Points and Authorities and Supporting Affidavit and Restraining Order Re Holding of an Administrative Hearing on the defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as Commissioner of, and Administrator of the Federal Home Loan Bank Administration, by placing a true copy thereof in an envelope

398 addressed as follows: Mr. John H. Fahey, Federal Home Loan Bank Commissioner, Federal Home Loan Bank Bldg., Washington, D. C., and then by sealing said envelope and depositing the same, with registered postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the persons by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, and there is a regular communication by mail between the place of mailing and the place so addressed.

Fay Dealey,

(S.) Fay Dealey.

Subscribed and sworn to before me this 2nd day of July 1946.

[seal] Maxine Laurel Berweiler,
Notary Public in and for said County and State.

My Commission expires Jan. 10, 1950.

401 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Complaint by intervener Home Investment Co. of Long Beach, a corporation

Filed July 1, 1946

403 Comes now Home Investment Co. of Long Beach, a California corporation, after leave of the court first had and obtained and files this its complaint in intervention in the above-entitled cause, and alleges:

I

That intervenor, hereinafter referred to as complainant, is a corporation duly organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of Long Beach, within the jurisdiction of this Court.

II

That complainant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of this Court or by an officer thereof.

III

That complainant is the maker and trustor under 174 deeds of trust heretofore tendered or deposited with the registry of this Court by the cross defendant and/or interpleader, Title Service Company, a corporation, as trustee named in said deeds of trust.

IV

That complainant is the record owner of the real property affected by said 174 deeds of trust hereinabove referred to in paragraph III hereof; that said real property is improved with dwellings and is all located in Tract No. 12529, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 256, Pages 18, 19 and 20 of Maps, in the office of

the County Recorder of Los Angeles County; that said lot numbers, the face amount of said deeds of trust and the book and page number of recordation are as follows:

Lot No	Note face amount	Recorded	
		Book	Page
[illegible]	$4,650.00	20509	251
2	4,650.00	20550	35
1	4,900.00	20550	33
4	4,600.00	20550	25
5	4,850.00	20468	209
6	4,150.00	20468	211
7	4,700.00	20468	213
10	4,600.00	20544	49
11	4,900.00	20541	53
12	4,650.00	20541	55
13	4,650.00	20541	57
15	4,850.00	20518	215
16	4,150.00	20518	213
17	4,800.00	20482	345
18	4,600.00	20482	351
24	4,650.00	20435	327
25	4,650.00	20425	325
27	4,800.00	20461	343
28	4,150.00	20461	345
29	4,700.00	20461	347
30	4,600.00	20500	273
31	4,650.00	20500	271
34	4,600.00	20530	153
14	4,150.00	20530	155
35	4,700.00	20530	157
38	4,600.00	20470	394
39	4,800.00	20508	267
41	4,600.00	20508	263
42	4,650.00	20546	59
43	4,900.00	20546	53
44	4,600.00	20546	55
45	4,650.00	20478	397
47	4,200.00	20478	395
48	4,650.00	20443	237
49	4,700.00	20495	303
51	4,600.00	20495	301
52	4,150.00	20517	205
53	4,600.00	20512	233
54	4,850.00	[illegible]	237
55	4,700.00	20483	357
56	4,600.00	20483	359
57	4,650.00	20483	361
59	4,200.00	20480	387
60	4,600.00	20480	385
61	4,900.00	20466	237
62	4,800.00	20540	81
63	4,600.00	20540	83
64	4,150.00	20540	85
65	4,700.00	20493	285
66	4,850.00	20493	283
67	4,600.00	20493	281
68	3,000.00	21487	461
69	4,650.00	20479	385
70	4,600.00	20479	389
71	4,150.00	20531	75
72	4,850.00	20492	249
73	4,650.00	20492	247
74	4,850.00	20490	305
75	4,900.00	20492	239
76	4,200.00	20537	129
77	4,650.00	20537	131
78	4,850.00	20532	151
80	4,650.00	20532	153
81	4,650.00	20552	147
82	4,200.00	20514	143
84	4,700.00	20547	33
85	4,650.00	20547	31
87	4,150.00	20559	9
88	4,650.00	20487	399
89	4,650.00	20534	79

Lot No.	Note face amount	Recorded	
		Book	Page
	4,900.00	20533	81
	4,650.00	20533	85
	4,850.00	20529	141
	4,650.00	20529	139
	4,650.00	20555	5
	4,650.00	20555	9
	4,200.00	20491	249
	4,650.00	20491	245
	4,650.00	20535	131
	4,150.00	20535	135
	4,850.00	20549	40
	4,650.00	20549	41
	4,850.00	20525	179
	4,650.00	20525	175
	4,200.00	20481	327
	4,200.00	20481	329
	4,650.00	20481	331
	4,700.00	20507	275
	4,200.00	20507	281
	4,850.00	20503	219
	4,650.00	20503	217
	4,650.00	20503	213
	4,650.00	20496	333
	4,650.00	20496	327
	4,200.00	20502	237
	4,700.00	20502	235
	4,650.00	20311	193
	4,850.00	20311	191
	4,650.00	20512	251
	4,650.00	20512	245
	4,900.00	20505	273
	4,650.00	20505	277
	4,650.00	20505	279
	4,200.00	20527	139
	4,650.00	20527	135
	4,650.00	20510	87
	4,900.00	20510	89
	4,150.00	20539	85
	4,650.00	20539	87
	4,850.00	20539	81
	4,900.00	20366	385
	4,650.00	20366	383
	4,650.00	20366	381
	4,900.00	20554	7
	4,200.00	20554	11
	4,650.00	20530	159
	4,900.00	20470	395
	4,850.00	20508	273
	4,650.00	20546	51
	4,200.00	20478	395
	4,700.00	20495	309
	4,850.00	20517	239
	4,650.00	20883	363
	4,900.00	20480	383
	4,650.00	20540	82
	4,650.00	20549	39
	4,150.00	20525	181
	4,900.00	20496	319
	4,200.00	20502	241
	4,650.00	20311	197
	4,850.00	20512	247
	4,900.00	20505	281
	4,200.00	20527	141
	4,700.00	20539	83
	4,200.00	20366	387
	4,550.00	20554	13
	4,900.00	20493	287
	4,150.00	20552	29
	4,650.00	20536	133
	4,900.00	20523	211
	4,150.00	20488	301
	4,900.00	20489	293
	4,200.00	20504	265
	4,650.00	20516	211
	4,900.00	20543	277

Lot No	Note face amount	Recorded Book	Page
185	4,150.00	20526	137
187	4,850.00	20514	145
188	4,700.00	20548	17
189	4,650.00	20545	59
190	4,650.00	20545	65
192	4,200.00	20543	23
193	4,650.00	20543	77
195	4,650.00	20520	167
196	4,650.00	20520	165
197	4,700.00	20520	163
198	4,200.00	20521	203
199	4,850.00	20521	199
200	4,150.00	20521	197
201	4,650.00	20447	337
202	4,200.00	20447	335
203	4,700.00	20447	333
206	4,850.00	20506	287
280	4,650.00	20527	161
281	4,700.00	20527	163
282	4,200.00	20527	159
284	4,700.00	20551	57
285	4,200.00	20551	55
286	4,650.00	20500	267
287	4,500.00	20489	393
288	4,650.00	20485	391
289	4,200.00	20526	121
291	4,650.00	20509	237

V

That the Long Beach Federal Savings & Loan Association is the beneficiary and owner of all said deeds of trust; that defendant A. V. Ammann has assumed the position as conservator of said Long Beach Federal Savings & Loan Association.

VI

That prior to the said A. V. Ammann assuming his duties as conservator of the Long Beach Federal
407 Savings & Loan Association, complainant had negotiated with the duly qualified and acting officers of the Long Beach Federal Savings & Loan Association to pay in full the balances then due on said 174 deeds of trust and had requested reconveyances thereof; that complainant had tendered to the Long Beach Federal Savings & Loan Association the full amount due thereon, including interest and costs, and had been assured by the officers of the said Long Beach Federal Savings & Loan Association that reconveyances would be forthcoming.

VII

That relying upon said representations complainant had secured a commitment for other and additional financing

to repay said loans and to secure an increased amount of cash and new trust deed loans have been recorded against the said 174 parcels of real property, but the consideration therefor has not been paid to or received by complainant.

VIII

That before said refinancing could be completed and reconveyances obtained the said defendant A. V. Ammann assumed control of the Long Beach Federal Savings & Loan Association.

IX

That subsequent to his assuming office the said A. V. Ammann as Conservator aforesaid, delivered to the said Title Service Company as trustee thereunder the said 174 deeds of trust with requests for full reconveyances, together with all proper costs and his demand for reconveyance.

X

That the said Title Service Company thereupon refused to execute said reconveyances upon the demand of the said A. V. Ammann and subsequently deposited said deeds of trust with the Clerk of this Court; that said deeds of trust are now in the custody of this Court.

XI

That the total amount due the Long Beach Federal Savings & Loan Association under said deeds of trust, amounting to approximately $847,190.00, has been tendered in payment thereof and is now available upon delivery to complainant of the reconveyances of said deeds of trust; that complainant is ready, willing and able to pay said amount, plus accrued interest and costs, upon receipt of proper reconveyances of said deeds of trust and does hereby tender said amount to this Court.

XIX

That by reason of the fact that said reconveyance cannot be obtained, complainant is suffering great and irrep-

arable loss in its operations in the home investment business, as well as the duplicate payment of interest, costs and attorney's fees, and delay in the construction of over nine hundred Title VI G.I. Homes, as well as numerous sales of completed homes to veterans and others; that demand has been duly made upon defendants Long Beach Federal Savings & Loan Association, Title Service Company and A. V. Ammann for said reconveyances; that said parties have failed and refused to furnish said reconveyances; that by reason thereof complainant has sustained damages in a sum which at this time it is unable to ascertain and complainant asks leave of Court to amend its complaint and pray for such damages against the parties plaintiff or defendant, or either or any of them, when such damages have been ascertained.

XIII

That in addition to the fact that complainant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of this Court or by an officer thereof, this Honorable Court has jurisdiction to hear and try the matters herein submitted by reason of diversity of citizenship of the various parties plaintiff and defendant, and also by reason of the fact that said action involves the interpretation and effect of the following laws and acts of Congress of the United States of America:

Home Owners Loan Act of 1933;
Federal Home Loan Bank Act, as amended;
The National Housing Act—Public No. 479;
409 Regulations, rules and directives purportedly made and adopted pursuant to and under each and all of said Acts.
Judicial Code, Title 28, Section 41, (26)

Wherefore, complainant, Home Investment Co. of Long Beach, a California corporation, prays that it have judgment against both plaintiffs and defendants as follows:

That the Court direct the immediate execution and delivery of the above mentioned trust deed reconveyances upon payment of the amount due, plus accrued interest and costs, into this Court;

That an order to show cause issue directed to the parties in interest requiring them to show cause why said money should not be accepted and deposited and the said trust deed reconveyances executed and delivered to complainant.

That complainant have judgment for damages, including attorney's fees and court costs, in such amount as may be sustained and proven to the satisfaction of this Court;

That complainant have such other and further relief as to the Court may seem proper.

F. HENRY NECASEK,
Attorney for Complainant
Home Investment Co. of Long Beach.

[*Duly sworn to by Lloyd S. Whaley; jurat omitted in printing.*]

419 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order to show cause why petition for intervention of Home Investment Co. of Long Beach, a corporation, should not be granted and why the defendants should not be required to execute and deliver 174 trust deed reconveyances upon payment of demand.

Filed July 1, 1946

420 Upon reading and filing of the motion and petition of Home Investment Co. of Long Beach, a California corporation, praying to intervene as a party in this action and requiring the parties plaintiff and defendant to show cause why the defendants should not execute and deliver to intervener 174 trust deed reconveyances upon payment of the total demand, plus accrued interest and costs, and good cause appearing therefor;

It is hereby ordered that the above-named plaintiff and the defendants show cause before me, in court room No. 3 thereof, in the U. S. Federal & Postoffice Building, in the City of Los Angeles, County of Los Angeles, State of California, on the 8th day of July, 1946, at 2 o'clock p.m.,

of that day, or as soon thereafter as counsel can be heard, why the prayer of said petitioner should not be granted.

It is further ordered, that copies of this order and said petition and complaint be served upon the above-named plaintiffs and defendants by service of a copy thereof by mail on or before 6 p.m., July 2, 1946 on Messrs. Westover & Smith, Attorneys for the Plaintiffs; Messrs. Thomas & Wallace, Attorneys for Defendant Title Service Company, a corporation; Raymond Tremaine, Attorney for Robert H. Wallis; Charles K. Chapman, Attorney for The Long Beach Federal Savings & Loan Association; James M. Carter, United States District Attorney at Los Angeles, California; and A. V. Ammann, individually and as Conservator of the Long Beach Federal Savings & Loan Association and by mailing a true copy of said petition, complaint and order by registered air mail to John H. Fahey, individually, and as Federal Home Loan Bank Commissioner, 101 Indiana Ave., Washington, D. C., not later than July 2, 1946, at 12 o'clock, noon.

Dated this 1st day of July, 1946.

PEIRSON M. HALL,
Judge.

421 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of mailing order to show cause and copy of petition and complaint
Filed July 8, 1946

422 STATE OF CALIFORNIA,
County of Los Angeles, ss:

F. Henry NeCasek, of the City of Long Beach, County of Los Angeles, State of California, being duly sworn, says: That he is over the age of 18, and is not a party to the above entitled action;

That on the 1st day of July, 1946, the Complaint in Intervention and Petition For Order To Show Cause of The Home Investment Co. of Long Beach, were filed, and afterward, to wit, on the said 1st day of July, 1946, an

Order To Show Cause was made by the Court directing copies of said Order and said Petition and Complaint to be served upon the hereinafter named plaintiffs and defendants by service of a copy thereof by mail on or before 6 o'clock P. M. July 2, 1946, on Messrs. Westover & Smith, attorneys for the plaintiffs; Messrs. Thomas & Wallace, attorneys for defendant Title Service Company, a corporation; Raymond Talmaine, attorney for Robert H. Wallis; Charles K. Chapman, attorney for The Long Beach Federal Savings & Loan Association; James M. Carter, United States District Attorney at Los Angeles, California, and A. V. Ammann, individually and as Conservator of The Long Beach Federal Savings & Loan Association; and also by mailing a true copy of said Petition, Complaint and Order by Registered Air Mail addressed to John H. Fahey, individually and as Federal Home Loan Bank Commissioner, 101 Indiana Avenue, Washington, D. C. not later than July 2, 1946, at 12 o'clock noon;

That in pursuance of the said Order of the Court, he, the said affiant, deposited in the United States Postoffice at the City of Long Beach, County of Los Angeles, State of California, at 11:25 o'clock A. M. on July 2, 1946, a copy of said Order and a copy of said Complaint and Petition, enclosed in a sealed envelope directed to John H. Fahey, individually and as Federal Home Loan Bank Commissioner, 101 Indiana Avenue, Washington, D. C. by Registered Prepaid Air Mail; that there is regular communication by the United States Mails from said postoffice of deposit thereof, as aforesaid, to said defendant's address;

That in further pursuance of said Order of the
423 Court, he, the said affiant, deposited in the United States Postoffice at the City of Long Beach, County of Los Angeles, State of California, at 12:08 o'clock P. M. on the 2nd day of July, 1946, a copy of said Order and copy of said Petition and Complaint, enclosed in separate sealed envelopes, postage prepaid, directed to each of the following named parties at the address shown after his name: Messrs. Westover & Smith, Suite 1007, Pacific Southwest Building, 215 West Sixth Street, Los Angeles 14, California; Messrs. Thomas & Wallace, Attorneys at Law, Jergins Trust Building, Long Beach 2, California;

Raymond Tremaine, Attorney at Law, 1007 Van Nuys Building, 210 West Seventh St., Los Angeles, California; Charles K. Chapman, Attorney at Law, Ocean Center Building, Long Beach, California; James M. Carter, United States District Attorney, U. S. Federal and Postoffice Building, Los Angeles, California; A. V. Ammann, individually and as Conservator of The Long Beach Federal Savings & Loan Association, 328 American Avenue, Long Beach, California; that there is a regular communication by United States Mails from said postoffice of deposit thereof, as aforesaid, to each of above named parties respective place of business or residence.

F. HENRY NECASEK.

Subscribed and sworn to before me this 8th day of July, 1946.

R. H. EVANS,
Notary Public in and for the
County of Los Angeles, State of California.

Photostat containing Post Office Department Receipts showing service by mail of Order to Show Cause, Petition and Complaint.

(See Opposite)

Form 3806-S

Receipt for Registered Article No. _____ Postmaster per _____

POSTMARK

Fee paid _____ *cents.* *Class postage* _____

Declared value _____ Surcharge paid, $ _____

Return Receipt fee _____ Spl. Del'y fee _____
Delivery restricted to addressee

In person _____ or order _____ *Fee paid* _____
Accepting employee will place his initials in space indicating restricted delivery.

e7—16—10433-2 GPO

The sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry Fees and Indemnities: Domestic registry fees range from 20 cents for indemnity not exceeding $5 up to $1.00 for indemnity not exceeding $1,000. The fee on domestic registered matter without intrinsic value and for which indemnity is not paid is 20 cents. Consult postmaster as to the specific domestic registry fees and surcharges and as to the registry fees chargeable on registered parcel post packages for foreign countries. Fees on domestic registered C. O. D. mail range from 25 cents to $1.00. Indemnity claims must be filed within 1 year (C. O. D. 6 months) from date of mailing.

Form 3817
Rev. 9-37

Post Office Department

Received from:

[illegible]

3233 E. Anaheim

One piece of ordinary mail addressed

to [illegible]

[illegible]

[illegible]

THIS RECEIPT DOES NOT PROVIDE FOR INDEMNIFICATION

U. S. GOVERNMENT PRINTING OFFICE 5—10335 POSTMASTER.

Form 3817
Rev. 9-37

Post Office Department

Received from:

[illegible]

3233 E. Anaheim

One piece of ordinary mail addressed

to Thomas & Wallace, Attorney at Law

[illegible]

[illegible]

THIS RECEIPT DOES NOT PROVIDE FOR INDEMNIFICATION

U. S. GOVERNMENT PRINTING OFFICE 5—10335 POSTMASTER.

Form 3817
Rev. 9-37

Post Office Department

Received from:

[illegible] McCasek
3233 E Anaheim

One piece of ordinary mail addressed

to Charles H. Chapman Attorney at Law
Ocean Center Bldg
Long Beach Calif

THIS RECEIPT DOES NOT PROVIDE FOR INDEMNIFICATION

U. S. GOVERNMENT PRINTING OFFICE 5—10325 POSTMASTER.

Form 3817
Rev. 9-37

Post Office Department

Received from:

F Henry McCasek
3233 E Anaheim St

One piece of ordinary mail addressed

to James M. Carter U.S. District Attorney
U.S. Federal & P.O. Bldg
Los Angeles, Calif

THIS RECEIPT DOES NOT PROVIDE FOR INDEMNIFICATION

U. S. GOVERNMENT PRINTING OFFICE 5—10325 POSTMASTER.

Form 3817
Rev. 9-37

Post Office Department

Received from:

[illegible]
[illegible] Anaheim

One piece of ordinary mail addressed

to [illegible] Chapman [illegible] Attorney
of the Long Beach Federal Savings Association
[illegible]

THIS RECEIPT DOES NOT PROVIDE FOR INDEMNIFICATION

U. S. GOVERNMENT PRINTING OFFICE 5—10325 POSTMASTER.

427 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Notice of hearing by court composed of three judges (pursuant to Section 380 (a) of Title 28 of Judicial Code)

Filed July 5, 1946

To: The Attorney General of the United States: and

John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, (also known as Commissioner of the Federal Home Loan Bank Administration) Defendants; and

A. V. Ammann, individually, and A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, Defendants herein,

James M. Carter, United States Attorney and Ronald Walker, Assistant United States Attorney; and Mildred Kluckhohn, Assistant United States Attorney, Attorneys for A. V. Ammann; and

Title Service Company, Defendant and Cross Claimant in Interpleader; and Thomas & Wallace, by Hafry
428 O. Wallace, Esquire, Attorneys for Title Service Company; and

Robert H. Wallis, Defendant and Cross Claimant in Interpleader; and Raymond Tremaine, his attorney; and Long Beach Federal Savings and Loan Association, Defendants and Cross Complainants, in third party practice; and

Charles K. Chapman, its attorney; and

Home Investment Company of Long Beach, intervener; and F. Henry C. NeCasek, Esquire, its attorney.

You and each of you are hereby notified and you will please take notice that the Honorable Peirson M. Hall, Judge of the United States District Court of the United States, Southern District of California, Central Division, has by Order heretofore made and issued on the 1st day of July, 1946, set for hearing by a Court composed of Three Judges, commencing at 2:00 o'clock P.M., on Monday, the 15th day of July, 1946, in the Courtroom of the Honorable Peirson M. Hall, Judge of the United States District Court in the Federal Building at Los Angeles, California, the following Motions and Matters:

a. Motion by Plaintiffs for a Preliminary Injunction to Restrain the Defendants from merging or consolidating the Long Beach Federal Savings and Loan Association or its assets with other institutions, and to Take Testimony and Evidence at the Hearing thereof.

b. Motion of the Plaintiffs for Preliminary Injunction to Restrain the Holding of an Administrative Hearing by the Federal Home Loan Bank Administration, et al.,

c. Motion of Defendants, A. V. Ammann, both individually, and as Conservator for the Long Beach Federal Savings and Loan Association to Dismiss the said action.

d. Motion by interpleader, Title Service Company for Preliminary Injunction to Restrain the Holding of
429 an Administrative Hearing by the Federal Home Loan Bank Board or Administration, et al.

At said time and place Motions will also be made by the Plaintiffs to continue in force the Temporary Restraining Orders to Restrain the merging of the said Long Beach Federal Savings and Loan Association, with any other institutions; and

To Restrain the Holding of an Administrative Hearing by the Federal Home Loan Bank Board or Administration;

Until the final adjudication and determination on the now pending said Motions for Preliminary Injunction to Restrain the merger of said Association and to Restrain the Holding of said Administrative Hearing.

Dated: At Los Angeles, this 3rd day of July, 1946.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

430 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of service by mail of notice of hearing by court composed of three judges (pursuant to Section 380 (a) of Title 28 of Judicial Code)

Filed July 8, 1946

Fay Dealey, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the

County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 1009 Pacific Southwest Building, 215 W 6th Street, Los Angeles 14, California, that on the 3rd day of July, 1946, affiant served the Notice of Hearing by Court Composed of Three Judges (Pursuant to Section 380 (a) of Title 28 of Judicial Code.) in the above entitled matter, on the defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board in said action, the Attorney General of the United States, the defendants, A. V. Ammann, individually, and A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, James M. Carter, United States Attorney, Ronald Walker and Mildred Kluckhohn, Assistant United States Attorneys for A. V. Ammann, the defendant, Title Service Company, by mailing to its
431 attorney, Harry O. Wallace of Thomas & Wallace, Esq., the defendant, Robert H. Wallis, by mailing to his attorney, Raymond Tremaine, the defendant, Long Beach Federal Savings and Loan Company, by mailing to its attorney, Charles K. Chapman, and upon the intervenier, Home Investment Company by mailing to its attorney, F. Henry C. Necasek, by placing a true copy in envelopes addressed respectively, as follows:

John H. Fahey, Federal Home Loan Bank Commissioner, Federal Home Loan Bank Building, Washington, D. C.

The Attorney General of the United States Washington, D. C.

A. V. Ammann, c/o Long Beach Federal Savings and Loan Association, Long Beach, California.

James M. Carter, United States Attorney, Ronald Walker, Assistant United States Attorney, Mildred Kluckhohn, Assistant United States Attorney, Federal Building, Los Angeles, California.

Harry O. Wallace, of Thomas & Wallace, 602 Jergins Trust Building, Long Beach, California.

Raymond Tremaine, Rm. 1007 Van Nuys Bldg., 210 W. 7th Street, Los Angeles, California.

Charles K. Chapman, Ocean Center Bldg., Long Beach 2, California.

F. Henry C. Necasek, 3233 East Anaheim, Long Beach, California.

and then by sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the persons by and for whom said service was made.

That there is delivery service by United States mail at the places so addressed, and there is a regular communication by mail between the place of mailing and the places so addressed.

Fay Dealey,
FAY DEALEY.

Subscribed and sworn to before me this 3rd day of July 1946.

[SEAL] MAXINE LAUREL BERWEILER,
Notary Public in and for said County and State.

My commission expires Jan. 10, 1950.

434 In the District Court of the United States

[Title omitted.]

Motion to dismiss or in lieu thereof to quash return of service of summons.

Filed July 5, 1946

Comes now defendant, John H. Fahey, individually and as Federal Home Loan Bank Commissioner, appearing specially and for the sole and only purpose of this motion, and moves the Court as follows:

1. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds:

a. That his official residence as such Commissioner is in the District of Columbia and that for the purpose of this suit he is an inhabitant of the District of Columbia and that this cause of action can only be maintained against him at that place.

b. That his residence as an individual is in the state of Massachusetts and that for the purpose of this suit he is an inhabitant of the state of Massachusetts and that this cause of action against him as an individual can only be maintained against him at that place.

c. That the defendant has not been properly served with process in this action.

435 This motion is based upon the records and files in this case, the affidavit of Ray E. Dougherty and the points and authorities attached hereto.

Dated: July 5th, 1946.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for Defendant, John H. Fahey, individually and as Federal Home Loan Bank Commissioner.

436 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of Ray E. Dougherty

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ray E. Dougherty, being first duly sworn, upon oath deposes and says that John H. Fahey individually, one of the defendants named in the above action, now is and for many years last past has been a resident and inhabitant of Swampscott in the state of Massachusetts, and that the official residence of John H. Fahey as Federal Home Loan Bank Commissioner is in the city of Washington, District of Columbia.

That prior to February 24, 1942, John H. Fahey was chairman of the Federal Home Loan Bank Board and that on that date he became and ever since said date has been Federal Home Loan Bank Commissioner.

That the facts herein stated are based upon his own personal knowledge.

RAY E. DOUGHERTY.

Subscribed and sworn to before me this 5th day of July, 1946.

[SEAL]

EDMUND L. SMITH,
Clerk U. S. District Court,
Southern District of California.
By E. M. ENSTROM, JR.,
Deputy.

439 In the District Court of the United States

[Title omitted.]

Motion to dismiss answer and cross-claim in interpleader of Robert H. Wallis

Filed July 5, 1946

Comes now defendant A. V. Ammann, individually and as conservator for the Long Beach Federal Savings and Loan Association, by and through his attorneys James M. Carter, U. S. Attorney for the Southern District of California, Ronald Walker and Mildred L. Kluckhohn, Assistant U. S. Attorneys, and moves the Court to dismiss the answer and cross-claim in interpleader of defendant, Robert H. Wallis.

This motion is made upon the ground that said answer and cross-claim fails to state a claim upon which relief can be granted.

This motion is based upon the records and files in the above entitled action and the points and authorities attached hereto.

Dated: July 5th, 1946.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for Defendant, A. V. Ammann, individually and as conservator for the Long Beach Federal Savings and Loan Association.

442 In the District Court of the United States

[Title omitted.]

Motion to dismiss answer and cross-claim in interpleader of Title Service Company

Filed July 5, 1946

Comes now defendant A. V. Ammann, individually and as conservator for the Long Beach Federal Savings and Loan Association, by and through his attorneys James M. Carter, U. S. Attorney for the Southern District of California, Ronald Walker and Mildred L. Kluckhohn,

Assistant U. S. Attorneys, and moves the Court to dismiss the answer and cross-claim in interpleader of defendant, Title Service Company.

This motion is made upon the ground that said answer and cross-claim in interpleader fails to state a claim upon which relief can be granted.

This motion is based upon the records and files in the above entitled action and the points and authorities attached hereto.

Dated: July 5th, 1946.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for Defendant, A. V. Ammann, individually and as conservator for the Long Beach Federal Savings and Loan Association.

445 In United States District Court

[Title omitted.]

Minute order—July 8, 1946

This cause coming on for hearing on Order to Show Cause directed to the defendants to show cause why the petition of the Home Investment Co. of Long Beach, a corporation, should not be granted and why the defendants should not be required to execute and deliver 174 Trust Deed Reconveyances upon payment of demand, pursuant to notice filed July 1, 1946; Messrs. Westover and Smith by Attorney Smith appearing as counsel for the plaintiffs; F. Henry NeCasek, Esq., appearing as counsel for Intervener, Home Investment Company of Long Beach; Messrs. Thomas and Wallace by H. O. Wallace, Esq., appearing as counsel for the Title Service Co.; Raymond Tremaine, Esq., appearing as counsel for the defendant and cross-complainant R. O. Wallis; Chas. K. Chapinen, Esq., appearing as counsel for the defendant, Long Beach Federal Savings and Loan Association; and James M. Carter, U. S. Attorney, by Ronald Walker, Assistant U. S. Attorney, appearing as counsel for the Government:

The Court presents for filing an Order from the Senior Circuit Judge of the Circuit Court of Appeals for the Ninth Circuit designating Hon. Albert Lee Stephens as the U. S. Circuit Judge and Hon. David W. Ling as the other U. S. District Judge to participate in the hearing and determination of the hearing herein now set for July 15, 1946.

Attorney Chapman voluntarily presents for lodging herein 174 requests for full reconveyances of trust deeds now on deposit with the Clerk of this Court and the Court thereupon orders same lodged in this case.

446 Attorney Wallace assures the Court that the Title Service Co. is prepared and ready to issue reconveyances on the 174 Trust Deeds on order of this Court.

Attorney NeCasek presents a prepared statement of the Conservator of the Long Beach Federal Savings & Loan Association as to the total amount of principal and interest due as of June 30th amounting to $[illegible],927.50, plus $95.217 per day thereafter, and the Home Investment Co. of Long Beach has the money ready in the form of a cashier's check to be deposited in lieu of the trust deeds. The Court orders said statement filed.

Attorney NeCasek presents a form of order for the issuance of the 174 reconveyances, and after much discussion between the Court and counsel as to the conditions of the order,

The Court orders counsel for the Home Investment Co. of Long Beach to prepare an order including all of the suggestions made here in open court, submit said proposed order to all counsel on record herein for their approval, and after each of counsel has signed approval thereof, said order may be submitted to the Court for approval and signature, and thereafter filed.

Counsel for all parties are allowed until the 15th of July 1946 in which to file answering affidavits to Defendant Ammann's motions to dismiss interpleader and Defendant Fahey's motion to quash service of summons and to dismiss, also points and authorities.

453 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Answer of Paul Mallonee, C. H. Newhouse and Winnie Bucklin, individually, and as representatives of a class, suing for and on behalf of all of the shareholder members of the Long Beach Federal Savings and Loan Association, an association organized and existing under and by virtue of the laws of the United States of America, defendants in intervention and plaintiffs in the original action to the complaint in intervention of Home Investment Company of Long Beach, a corporation

Filed July 8, 1946

454 Come now, the plaintiffs herein, Paul Mallonee, C. H. Newhouse and Winnie Bucklin, individually, and as representatives of a class suing for and on behalf of all of the shareholder members of the Long Beach Federal Savings and Loan Association, an Association organized and existing under and by virtue of the Laws of the United States of America, plaintiffs in the above entitled action, and defendants therein in intervention and separating themselves from their co-defendants in intervention and for themselves alone, and for answer to the Complaint in Intervention by intervener Home Investment Company of Long Beach, a Corporation, admits, denies and alleges, as follows:

I

That these answering defendants in intervention do not have sufficient information or belief to enable them to answer the allegations contained in Paragraphs IV, VI, VII, VIII, IX, X and XI, of said Complaint by intervener Home Investment Company of Long Beach, a Corporation, and basing their denial on the lack of such information and belief, generally and specifically denies each and every allegation contained in Paragraphs IV, VI, VII, VIII, IX, X and XI of said Complaint on file herein, except that the answering defendants in intervention do specifically admit that the deeds of trust described in said

Complaint have been deposited with the Clerk of this Court, and that said deeds of trust are now in the custody of this Court, as in Paragraph X of said Complaint alleged.

II

That these answering defendants in intervention do not have sufficient information or belief to enable them to answer the allegations contained in Paragraph XII of said Complaint, and basing their denial upon that ground, generally and specifically deny each and every allegation contained in said Paragraph XII, except that these answering defendants in intervention allege that no demands and/or cross demands have ever been made upon
455 them, or any or either of them, or any reconveyances and further, in connection with the matters so alleged in said Paragraph XII, these answering defendants in intervention allege that if the said plaintiff in intervention has or does ever suffer any damage whatsoever, as in said Paragraph XII alleged, that the same damage was caused by, and is a result of the intermeddling, interfering and/or improper and unlawful usurpation by the defendants in said action, A. Y. Ammann and/or John H. Fahey, with the business, affairs and/or property of the defendants herein, Long Beach Federal Savings and Loan Association and/or with the possession thereof.

III

By way of answer to Paragraph XIII of said Complaint in Intervention, these answering defendants in intervention admit each and every of the allegations therein contained and in that connection allege that the jurisdiction of this Court can be exercised only by issuance of its orders, judgments and/or decrees against all and not against only part of the defendants in intervention joined in said Complaint in Intervention.

Wherefore these answering defendants in intervention (the plaintiffs in the above entitled action) pray judgment as follows:

1. That the adverse claims, demands and/or alleged titles of any and all parties be declared and adjudged by

this Honorable Court and that by its Order it be decreed that the title, ownership and right to possession in and to said notes and/or trust deeds be found to be in these answering defendants in intervention, by virtue of their ownership of and/or interests in said Long Beach Federal Savings and Loan Association as shareholder members thereof.

2. That any and all other adverse claims, demands and/or assertions of titles of any and all other parties, be quieted and forever barred.

3. That each, all and every of said 174 notes
456 and deeds of trust and each of them, as well as any and all proceeds thereof, or money, or other thing of value substituted in lieu thereof, be ordered by this Honorable Court delivered into the possession of these answering defendants in intervention.

4. That all other parties to this action be perpetually enjoined and debarred from claiming or ever asserting any title, claim or demand whatsoever in and/or to said notes and deeds of trust.

5. That these answering defendants in intervention have and recover their costs herein incurred, and attorneys' fees.

6. And for such other and further relief as to this Court may seem meet and proper in the premises.

Dated at Los Angeles, California, this 8th day of July, 1946.

WESTOVER & SMITH,
By [S] WYCKOFF WESTOVER,
Attorneys for Defendants in Intervention (Plaintiffs in the above entitled action) Paul Mallonee, C. H. Newhouse and Winnie Bucklin.

457 STATE OF CALIFORNIA,
County of Los Angeles, ss:

Paul L. Mallonee being by me first duly sworn, deposes and says: That he is one of the defendants in intervention (plaintiffs in the original action) in the foregoing and above entitled action; that he has read the foregoing answer to complaint in intervention of the Home Investment Company of Long Beach, a corporation, and knows the contents thereof; and that the same is true of his

own knowledge, except as to the matters which are therein stated upon his information or belief or lack of information or belief, and as to those matters that he believes it to be true

Paul L. Mallonee,
PAUL L. MALLONEE.

Subscribed and sworn to before me this 8th day of July 1946.

[NOTARIAL SEAL] MAXINE LAUREL BERWEILER,
Notary Public in and for said County and State.
My Commission Expires Jan. 10, 1950.

458 Received copy of the within answer this 8th day July 1946.

RONALD WALKER.

Received copy of the within answer this 8th day of July 1946.

F. HENRY NECASEK,
Attorney for Home Inv. Co. of L. B.

459 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Answer of Long Beach Federal Savings and Loan Association to complaint in intervention of Home Investment Company of Long Beach, a corporation

Filed July 8, 1946

Comes now, defendant in intervention, Long Beach Federal Savings and Loan Association, and for answer to Complaint in Intervention of Home Investment Company of Long Beach, plaintiff in intervention, denies, admits and alleges as follows:

I

Answering Paragraph IV of Complaint in Intervention of Home Investment Company, defendant in inter-
460 vention Long Beach Federal Savings and Loan Association has not information nor belief sufficient upon which to base a denial as to who is the record owner of the one hundred seventy-four (174) parcels of real

property described in said Paragraph IV of said Complaint in Intervention and on such lack of information and belief, denies that plaintiff in intervention, Home Investment Co. of Long Beach, is such record owner.

II

Answering Paragraph V of said Complaint in Intervention of Home Investment Co. of Long Beach, defendant in intervention Long Beach Federal Savings and Loan Association admits that it is the beneficiary and owner of all of said deeds of trust and in this connection alleges that defendant A. V. Ammann illegally, wrongfully, and forcibly seized possession and control of said notes and deeds of trust from the possession of said defendant in intervention Long Beach Federal Savings and Loan Association, without any right, authority or justification for so doing. That the said defendant A. V. Ammann was and is a trespasser and wrongdoer in possession of said defendant in intervention Long Beach Federal Savings and Loan Association's property, including said one hundred seventy-four notes and deeds of trust.

III

Answering Paragraph VI of Complaint in Intervention of Home Investment Co. of Long Beach, defendant in intervention Long Beach Federal Savings and Loan Association admits that negotiations for paying the balance due on said notes and deeds of trust were in progress, but denies that plaintiff in intervention, Home Investment Co. of Long Beach had tendered to defendant in intervention Long Beach Federal Savings and Loan Association payment of said deeds of trust and in this connection alleges said one hundred seventy four notes and deeds of trust and each of the same, has, since the date of said negotiations, been forcibly and wrongfully seized and wrested from the possession and control of the said defendant in intervention Long Beach Federal Savings and Loan Association, by the defendants A. V. Ammann and John H. Fahey.

IV

Answering Paragraph VII of said Complaint in Inter-

vention of Home Investment Co. of Long Beach, defendant in intervention Long Beach Federal Savings and Loan Association has neither information nor belief sufficient to make allegations concerning said matters and on such lack of information and belief, denies every allegation in said paragraph contained.

V

Answering Paragraph VIII of said Complaint in Intervention of Home Investment Co. of Long Beach, defendant in intervention Long Beach Federal Savings and Loan Association denies that the said defendant A. V. Ammann has any rightful, authority, control or dominion over the said defendant in intervention Long Beach Federal Savings and Loan Association, or its affairs, and in this connection alleges that the said defendants John H. Fahey and A. V. Amman forcibly, unlawfully and wrongfully seized and wrested possession and control of said association and its business and properties from this defendant, all as more fully alleged in defendant Long Beach Federal Savings and Loan Association's Answer and Cross-Claim to which reference is made for further particulars.

VI

Answering Paragraph IX of said Complaint in Intervention of Home Investment Co. of Long Beach, defendant in intervention Long Beach Federal Savings and Loan Association denies that the said A. V. Ammann ever assumed office as, or obtained any valid authority or appointment as, conservator of this defendant Long Beach Federal Savings and Loan Association. This defendant also denies that requests for full reconveyances of said one hundred seventy-four notes and deeds of trust
462 were executed by it, or by anyone on its behalf, or in place of it; and in this connection alleges that the said defendant A. V. Ammann has, was and is attempting to usurp and divert the authority, control and possession of said one hundred seventy-four notes and deeds of trust and the funds they represent from the true owner of the same, to-wit: Long Beach Federal Savings and Loan Association, to himself the said A. V. Ammann.

VII

Answering Paragraph X of said Complaint in Intervention of Home Investment Co. of Long Beach, this defendant in intervention Long Beach Federal Savings and Loan Association admits that the trustee named in said deeds of trust, defendant Title Service Company, refused to execute said reconveyances and in this connection alleges that no authorized, proper or legal request for such reconveyances had ever been presented to said defendant Title Service Company by anyone authorized or empowered to make such request.

VIII

Answering Paragraph XI of said Complaint in Intervention of Home Investment Co. of Long Beach, this defendant in intervention Long Beach Federal Savings and Loan Association denies that the sum of Eight Hundred Forty-seven Thousand One Hundred Nin-ty Dollars ($847,190.00), or any sum, has been tendered to it, nor to anyone for it, or on its behalf. This answering defendant has not information nor belief sufficient to answer or deny the other allegations contained in said Paragraph XI and upon that ground denies each and all of the same.

IX

Answering Paragraph XII of said Complaint in Intervention of Home Investment Co. of Long Beach, this defendant in intervention Long Beach Federal Savings and Loan Association has neither information nor belief to answer said Paragraph and therefore upon such lack of information and belief denies each and every allegation in said paragraph contained, except that defendant Long Beach Federal Savings and Loan Association specifically denies that demand has ever been made upon it for any or all of said reconveyances and in this connection alleges that if said plaintiff in intervention has, or does, suffer any damage whatsoever the same was caused by, and is a result of, the intermeddling, interference and unlawful usurpation by and of the defendants A. V. Ammann and John H. Fahey, with the affairs, property and business of defendant Long Beach Federal Savings and Loan Association.

X

Answering Paragraph XIII of said Complaint in Intervention of Home Investment Co. of Long Beach, this defendant in intervention Long Beach Federal Savings and Loan Association admits that this Honorable Court has jurisdiction of the matters contained in said Complaint in Intervention and in that connection alleges that said jurisdiction can only be exercised by orders, judgments and decrees against all and not merely part of the defendants in Intervention named in said Complaint in Intervention.

XI

That each and all of said notes and deeds of trust contain a provision that the attorney fees of beneficiary in any action brought, involved or concerning said deeds of trust are secured thereby. That defendant Long Beach Federal Savings and Loan Association has employed as its attorney in connection with the said matter of said one hundred seventy-four notes and deeds of trust, Charles K. Chapman, Esquire, who is a member of the State Bar of the State of California, an attorney at law duly licensed and qualified to practice in all of the Courts of the State of California, and in this Honorable United States District Court, and in the Supreme Court of the United States. That the amount of said attorney fees which will have to be incurred can not be exactly estimated this early in this proceeding.

464 Wherefore, Defendant in Intervention Long Beach Federal Savings and Loan Association prays judgment against all parties, as follows:

1. That the said one hundred seventy-four (174) notes and deeds of trust securing the same, and all interest, rights and titles therein, thereto, and conveyed thereby, are owned by, the property of, and belong to, the defendant Long Beach Federal Savings and Loan Association, and that no other party plaintiff or defendant has any interest, right or title thereto, or therein.

2. That each and all of said one hundred seventy-four notes and deeds of trust, and all of the same, be ordered by this Honorable Court delivered to the possession of defendant Long Beach Federal Savings and Loan Association.

3. That the adverse claims, demands and assertions of all other parties be declared and adjudged by this Honorable Court to be void, invalid and of no effect.

4. That the title, ownership and possession of said defendant Long Beach Federal Savings and Loan Association be quieted, established and cleared forever of each, every and all of said adverse claims, demands and assertions of all other parties to this action.

5. That all other parties to this action be perpetually enjoined and debarred by this Honorable Court from herein or elsewhere asserting, presenting or seeking to establish their said claims, titles and demands against the said notes, deeds of trust and each and all of the same or the proceeds thereof or any of the same.

6. That this Honorable Court fix a reasonable sum as attorney fees for attorney for Long Beach Federal Savings and Loan Association and declare the same to be a lien and first charge upon said notes and deeds of trust or the funds and proceeds thereof.

465 7. That the defendant Long Beach Federal Savings and Loan Association recover its costs herein incurred, and

8. For such other and further relief as seem just and proper to the Court in the premises.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant in Intervention Long Beach Federal Savings and Loan Association.

[Duly sworn to by F. A. Gregory; jurat omitted in printing.]

466 Received copy of the within Answer to Complaint in Intervention this 8th day of July, 1946.

F. Henry NeCasek,
F. HENRY NECASEK,
Attorney for Plaintiff in Intervention, Home Investment Co. of Long Beach.

467 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Answer of defendant in intervention Title Service Company to complaint in intervention of Home Investment Co., etc.

Filed July 8, 1946

Comes now the Defendant in Intervention, Title Service Company, hereinafter called Defendant, separating itself from its co-defendants in intervention, and for itself alone, and for answer to the Complaint in Intervention of Home Investment Co., of Long Beach, a corporation, hereinafter referred to as the Complaint, admits, denies
468 and alleges as follows:

I

Admits the allegations of Paragraph I of said complaint.

II

For lack of sufficient information or belief to enable it to answer denies the allegations of Paragraph II of said Complaint.

III

Admits the allegations of Paragraph III of said Complaint.

IV

For lack of sufficient information or belief to enable it to answer, denies the allegations as to record ownership of the property described in Paragraph IV of said complaint, and alleges that if the Intervenor has any title in and to said real property that the same is an equitable ownership, only, and that the legal title in and to said real property is vested in this Defendant, as trustee under deeds of trust given to secure the payment of said promissory note.

V

Admits the allegations of Paragraph V of said complaint.

VI

For lack of sufficient information or belief to enable it to answer, denies generally and specifically each and every allegation of Paragraph VI of said complaint.

VII

For lack of sufficient information or belief to enable it to answer, denies generally and specifically, each and every allegation of Paragraph VII of said complaint.

VIII

For lack of sufficient information or belief to enable it to answer, denies generally and specifically, each and every allegation of Paragraph VIII of said complaint.

469 IX

Admits the allegations of Paragraph IX of said complaint, save and except the allegation that the Defendant, A. V. Ammann, as the purported Conservator of the Defendant, Long Beach Federal Savings and Loan Association, delivered to this Defendant, Title Service Company, "all proper costs" which allegation is specifically denied; this answering defendant denying that any proper costs, or any sum of money to cover costs were ever delivered by the said A. V. Ammann to this Defendant; and alleges that ~~said requests for~~ full reconveyance were not executed by the beneficiary of trust deeds, to-wit: Long Beach Federal Savings and Loan Association.

X

Admits the allegations of Paragraph X of said complaint.

XI

For lack of sufficient information or belief to enable it to answer denies, generally and specifically, each and every allegation of Paragraph XI of said complaint, and alleges that no tender of any sum of money has ever been made to this Defendant by the Complainant in intervention, or on its behalf.

XII

For lack of sufficient information or belief to enable it to answer, denies generally and specifically, each and every allegation of Paragraph XII of said complaint, save and except the allegation that demand has been made upon this Defendant for said reconveyances which allegation is admitted. Alleges that this Defendant is, and at all times since the 10th day of June, 1946, has been, unable to make execute or deliver unto the Intervenor any reconveyances by reason of the fact that on said date the promissory notes, deeds of trust and requests for reconveyance executed by the said A. V. Ammann, as the purported Conservator for said Long Beach Federal Savings and Loan Association were deposited, in
470 interpleader, by this defendant, with the Registry of this Honorable Court.

Denies that the Intervenor has sustained damages in any sum, or in any sum at all, unascertained or otherwise, by reason of any matter, act or thing done or refused to be done by this answering Defendant.

XIII

For lack of sufficient information or belief to enable it to answer, denies, generally and specifically, each and every allegation of Paragraph XIII of said complaint.

XIV

Alleges that by reason of the matters set forth and alleged in its Answer and Cross-Claim in Interpleader on file herein, hereby referred to and made a part hereof by reference with the same force and effect as though the same were herein set forth in full, this defendant was placed in a position of jeopardy and made subject to a multiplicity of actions and thereby elegible to the relief provided in Section 41 (26) of Title 28 of the United States Court and that the deposit with the Registry of this Honorable Code by this Defendant of said 174 promissory notes, deeds of trust and purported requests for reconveyance were made pursuant to the provisions of that statute.

Wherefore, this answering Defendant offers to carry out any proper order of this Honorable Court made in

the premises and prays that the complainant in intervention take nothing against this defendant and that this defendant be awarded its costs of action and reasonable attorneys' fees herein.

THOMAS AND WALLACE,
By H. O. WALLACE,
Attorneys for Title Service Company,
Defendant in Intervention.

471 STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ethel L. Roberts, being by me first duly sworn, deposes and says: That she is the Assistant Secretary of Title Service Company, a corporation in the foregoing and above entitled action; that she has read the foregoing Answer of Defendant in Intervention Title Service Company to Complaint in Intervention of Home Investment Co., etc., and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

ETHEL L. ROBERTS.

Subscribed and sworn to before me this 6th day of July, 1946.

[SEAL] HAZEL ROBERTS,
Notary Public in and for said County and State.

472 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Proof of service of answer of defendant Title Service Company to complaint in intervention of Home Investment Co., etc.

Filed July 8, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

H. O. Wallace, being first duly sworn, deposes and says: That he is a member of the bar of this Honorable Court and that he is one of the attorneys for the Defendant in Intervention Title Service Company in the above entitled and numbered matter.

473 That on the 6th day of July, 1946, he served true and correct copies of the Answer of Defendant Title Service Company to Complain in Intervention of Home Investment Co., of Long Beach, A Corporation, upon the following parties to said action by placing the same in envelopes addressed to said parties, or to their attorneys of records herein, addressed to them in the manner hereinafter set forth at their respective business addresses, and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Long Beach, California, the place whereat affiant has his office, That there is regular delivery service by United States mail at the places so addressed.

That the parties served and the addresses placed upon said envelopes, as aforesaid, are as follows:

Plaintiffs and Defendants Westover and Smith, in Intervention: Attorneys at Law, Pacific Southwest Building, 215 West Sixth Street, Los Angeles, California;

Defendant and Defendant in Intervention, A. V. Ammann, James Carter, U. S. Attorney, Ronald L. Walker, Asst. U. S. Attorney, Federal Building, Los Angeles, California;

Defendant and Defendant in Intervention Long Beach Federal Savings and Loan Association, Charles C. Chapman, Ocean Center Building, Long Beach, California;

Defendant and Defendant in Intervention Robert L. Wallis, Raymond Tremaine, 1007 Van Nuys Building, 210 West Seventh Street, Los Angeles, California;

Defendant and Defendant in Intervention John H. Fahey, John H. Fahey, John H. Fahey, Federal
474 Home Loan Bank Commissioner, 101 Indiana Avenue, Washington, D. C.;

Plaintiff in Intervention Home Investment Co., of Long Beach, a corporation, F. Henry NeCasek, 3233 East Anaheim Street, Long Beach, California.

Dated at Long Beach, California, this 6th day of June, 1946.

H. O. Wallace.
H. O. WALLACE.

Subscribed and sworn to before me this 6th day of June, 1946.

[SEAL] HAZEL ROBERTS,
Notary Public in and for said County and State.

475 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of T. A. Gregory re pertinent facts in opposition to motions of defendants, John H. Fahey and A. V. Ammann to dismiss or to quash return of service of summons on defendant, John H. Fahey.

Filed July 10, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

T. A. Gregory, being first duly sworn, deposes and says: That he is now, and has at all times since its organization, been President of the Long Beach Federal Savings and Loan Association.

That neither Subdivision (a) nor (c) of Section 1464 of Title 12 of the Federal Code; of the Home Owners Loan Act of 1933, nor any other part of said Home Owners Loan Act sets up or establishes any standard or policy, limiting or defining standards or policies authorizing the making

of Rules and Regulations by one man, to wit: the defendant John H. Fahey.

That the attempted delegation of Legislative authority or quasi judicial authority to the Federal Home Loan Bank Board (now and for the past several years composed of only one man, to wit: the defendant John H. Fahey) was ineffectual and incomplete and an unconstitutional attempt by Congress to so delegate its exclusive Legislative authority and an ineffectual and unconstitutional attempt to delegate to a one man Board, the authority to create judicial or quasi judicial hearing tribunals;

That the Long Beach Federal Savings and Loan Association is a mutual savings and loan Association, organized by the filing of subscriptions to shares from fifty-one (51) different persons at Five ($5.00) Dollars each, except for your affiant, who originally invested the sum of Seventy-two hundred and fifty ($7250.00) Dollars making the total original investment Seven thousand five hundred ($7,500.00) Dollars;

That on or about July 10, 1934, Charter No. 426 was issued, a partial copy of which has been attached by the defendant A. V. Ammann to his Memorandum in Opposition to Motion of the Plaintiffs for Preliminary Injunction, marked Exhibit "D", which Exhibit is not completely filled out, dated nor signed.

That at the time of the organization of the Long Beach Federal *Federal* Savings and Loan Association in 1934, and thereafter until 1942, such Associations were regulated and supervised by a Board, which was defined by Section 1462 of Title 12 of the Home Owners Loan Act of 1933 as,

"The term Board means the Federal Home Loan Bank Board created under the Federal Home Loan Act."

That the Federal Home Loan Bank Board was created by the Federal Home Loan Bank Act, Section 1437 of Title 12 Federal Code, which at that time and until 1942, provided:

"For the purposes of this Act, there shall be a Board, to be known as the 'Federal Home Loan Bank Board', which shall consist of *Five* (5) citizens of the United States appointed by the President of the United States, *by and with the advice and consent of the Senate. Not more than Three (3) members of the Board*

476

477

shall be members of the same political party. Each member shall devote his entire time to the business of the Board. * * *" [Italics added.]

That in 1934, when the Long Beach Federal Savings and Loan Association was organized, the Rules and Regulations for Federal Savings and Loan Associations provided, among other things, that the Board, upon making of findings that the interests of creditors or shareholders were being jeopardized, or the business was in an unsafe condition, or if the Association had suspended payment of its obligations and under various other conditions, the said Board (composed of five members) might take certain specified action, including the appointment of a Conservator, and at that time the Regulations specifically provided that:

"It will not be the policy of the Board except in extraordinary circumstances to exercise such power without giving the institution an opportunity to be heard."

That at said time in 1934, said Rules and Regulations did not provide for any appeal to the Court, excepting for the limited purposes to confirm a sale or dispose of assets.

That on April 8, 1937, the Long Beach Federal Savings and Loan Association made its application for leave to amend its Charter to a so-called Charter "K" giving it broader powers of operation, and, pursuant thereto and shortly thereafter, Charter K No. 426 was issued, and so-called copies thereof having been attached as Exhibit "F" to the Memorandum in Opposition to Motion for Preliminary Injunction of the defendant A. V. Ammann, which said Exhibit "F" is apparently an incomplete copy as it is not signed, dated and only partially filled in.

478 On December 1, 1936, the Federal Home Loan Bank Board (still composed of five members) adopted Revised Rules and Regulations, which, among other things, changed and deleted the statement of policy of the Board to give institutions an opportunity to be heard before exercising the powers, if any they had, to seize such an Association.

That offsetting the deletion of the Board's Statement of Policy, the Board (then composed of five members) by its Revised Rules and Regulations, provided that:

"Before the appointment of a Conservator or Receiver, the Federal Association will be given an opportunity to be heard; provided, however, that the Board may appoint a temporary Conservator pending such hearing."

(Section 51 c of Revised Rules and Regulations of Federal Savings and Loan Association, effective December 1, 1936.)

The former Rules and Regulations, effective October, 1934, provided, among other things, for an automatic hearing upon a ten days' notice, mailed to all shareholders, borrowers and creditors, affording them an opportunity to be heard in regard to any seizure by any Conservator.

Similar provisions for an opportunity for the shareholder members to be heard, were contained in the Rules and Regulations adopted December 1, 1936. (See Section 52 thereof.)

That the Federal Home Loan Bank Board was consolidated with the National Housing Agency by Executive Order No. 9070, effective the 24th day of February, 1942, and thereby the defendant, John H. Fahey, the then Chairman of the Federal Home Loan Bank Board, became the Commissioner and the sole and only member of the so-called Federal Home Loan Bank Board, and that ever since said date, the said John H. Fahey, has exercised and
479 dictated the powers and policies of the so-called Board composed of one man, to wit: himself.

That on about August 15, 1943, the Board, i.e., the defendant, John H. Fahey, changed, revised and adopted new and different Federal Regulations dealing with the appointment of Conservators, etc., for Federal Savings and Loan Associations providing, among other things, that, whenever in the opinion of the Federal Home Loan Bank Administration (composed of one man, the defendant, John H. Fahey), any Federal Savings and Loan Association was guilty of the commission of any of some ten offenses, listed as legal conclusions, the Federal Home Loan Bank Administration (to wit: the defendant, John H. Fahey, one man) may appoint a Conservator, etc., who shall forthwith upon his appointment take possession of the Association, and thereupon the officers and directors of such Association shall not thereafter have or exercise any rights, powers or privileges, or act in connection with any of the assets or property of the Association.

(See Section 207.3 of Federal Regulations. Part VI.)

That the Federal Regulations, as adopted by the Federal Home Loan Bank Administration (composed of one man, the defendant John H. Fahey), do not provide due or any process or hearing, or any notice of any hearing, or opportunity to be heard, or examined, or for any hearing to be held prior to the appointment of such a Conservator to seize the possession of such Federal Savings and Loan Associations and all of their assets.

That no hearing of any kind is provided for in said Federal Regulations, except only that such Federal Savings and Loan Associations, who have not requested nor consented to the appointment of a Conservator or Receiver may file an answer and serve a written demand for a hearing within fourteen days after such seizure and if so demanded, such a hearing may be held before the Federal Home Loan Bank Commissioner, or before a trial examiner, or hearing officer, appointed by the Federal Home Loan Bank Administration (composed of one man, the defendant, John H. Fahey);

480 That such Federal Regulations do not provide for, nor do they establish any procedure for, nor allow, nor authorize, nor permit any appeal to the duly constituted Courts of Justice of the United States of America, nor of any State thereof, from the determination of any such matters.

That the Federal Regulations as revised and adopted by the Federal Home Loan Bank Administration (composed of one man, the defendant John H. Fahey, alone), dated August 15, 1943, repealed, deleted and omitted from said Regulations, the requirements that;

"After ten (10) days' notice, mailed to each member and creditor of the Association at his last known address, as shown on the books of the Association, the Conservator or Receiver shall conduct a hearing at the home office of the Association, or at some other convenient place designated by him in said notice."

The Rules and Regulations purportedly adopted August 15, 1943, by the so-called Home Loan Bank Administration, to wit: the defendant, John H. Fahey, alone, do not provide for, authorize or afford opportunity to the shareholder members, owners of such Association, to appear at any

hearing, submit any evidences, or be afforded any opportunity to participate in, or have anything to do with, the determination of, or disposition of, the Association, which they own and its assets which belong to them.

That on May 20, 1946, the defendant A. V. Ammann, orally claiming to act, by appointment of the defendant John H. Fahey, as the Conservator of the Long Beach Federal Savings and Loan Association, did physically and violently seize and take possession of the Long Beach Federal Savings and Loan Association and all of its $26,000,000.00 of assets, all then being located in the City of Long Beach, County of Los Angeles, State of California.

Thereafter, repeated demands, by your affiant, as
481 to the authority of the said defendant, A. V. Ammann, he did finally produce a typewritten sheet of paper, unsigned, and he did then and there, in your affiant's presence, verify the same by he, himself, appointing himself the said A. V. Ammann, to be the alleged Conservator of the Long Beach Federal Savings and Loan Association.

That the dispossessing of your affiant and the other duly elected, qualified and acting officers and directors of said Long Beach Federal Savings and Loan Association, was accomplished by the defendant A. V. Ammann by repeated threats of criminal prosecution, unless your affiant and the other officers and directors immediately deliver to him the records, cash, securities, bonds, furniture, equipment, real estate and all assets of said Association.

That at the time of said seizure, to wit: on May 20, 1946, the said Long Beach Federal Savings and Loan Association had grown, under the management of your affiant and its duly elected officers, and directors, from an Association organized in 1934 with assets of $7,500.00 to an Association on May 20, 1946, having assets in excess of $26,000,000.00, and having outstanding shareholder member certificates of savings, amounting to approximately $22,500,000.00.

That semi-annual dividends of 2½% to 4% per annum, have been paid regularly without ommission or default every year since the organization of the Association.

That all of the assets of said Long Beach Federal Sav-

ings and Loan Association amounting to in excess of $26,000,000.00, and including profits and undivided surplus and reserves in excess of $1,300,000.00, belonged to, and were the property of, approximately 16,000 mutual shareholder members, nearly all of whom are residents of Los Angeles County, in Southern California.

That on May 20, 1946, at the time of said seizure, said Association had approximately $12,000,000.00 in Government Bonds, a large part of which were unregistered bearer bonds, negotiable without endorsements.

482 That said Association at said time also had approximately 8,000 secured notes, with an unpaid balance amounting to approximately $12,000,000.00, all made by residents of Southern California, and which were payable at the office of the Long Beach Federal Savings and Loan Association in Long Beach, and were payable to the Long Beach Federal Savings and Loan Association, a mutual association, having its legal domicile in Long Beach, Southern California, and all of which were secured by Trust Deeds, which conveyed the title to approximately 8,000 parcels of real estate in Southern California, to the Title Service Company, a California Corporation, having its legal domicile in Long Beach, California, as Trustee under such deeds of trust.

That at the time of said seizure on May 20, 1946, all of the assets of said Association, including both real and personal property were physically present in Southern California.

That at the time of said seizure, there was physically present in the office of said Long Beach Federal Savings and Loan Association cash and unregistered bearer bonds, negotiable without endorsements, amounting in the aggregate to approximately $100,000.00, the exact amount of which is unknown to this affiant for the reasons that though repeatedly requested so to do, the defendant A. V. Aufmann refused, declined and did not give to your affiant or to any of the other officers or directors of the Long Beach Federal Savings and Loan Association any receipt, acknowledgment, inventory, or other evidence of the amount of cash, bearer bonds, securities, negotiable assets, valuables, or other property, which were at that time physically seized and taken from the possession of

your affiant and the officers and directors of the Long Beach Federal Savings and Loan Association.

That at the time of said seizure, the said defendant, A. V. Ammann, and his assistants and employees, although requested so to do, refused, declined and would not permit the auditors of said Association, or any other Certified Public Accountant to make any
483 list or inventory of the bearer bonds, cash, securities and other property being seized from said Association.

That at the time of said seizure, your affiant heard the said defendant A. V. Ammann state, "If it gets in the paper we are here, we will create a "run" and tear down the institution, that's why we are here."

Your affiant is informed and believes and upon such information and belief alleges that within the first ten days after said Long Beach Federal Savings and Loan Association was seized by the defendant A. V. Ammann, a "run" on said financial institution was created and there was withdrawn from said Association in excess of $6,000,000.00; and

That your affiant is informed and believes and upon such information and belief alleges that since said Association was seized on May 20, 1946, by the said defendant A. V. Ammann, there has been withdrawn from said financial institution in excess of $8,000,000.00.

That your affiant is informed and believes and upon such information and belief alleges that since the defendant A. V. Ammann seized the said Long Beach Federal Savings and Loan Association and for the period from May 20, 1946, to June 30, 1946, a period of approximately forty days, the said defendant A. V. Ammann did appropriate and set aside for salaries, expenses and costs for himself and his associates, the sum of approximately $17,000.00, over and above the expenses and salaries paid the regular employees of the Long Beach Federal Savings and Loan Association.

That your affiant and other officers and directors of the Long Beach Federal Savings and Loan Association were fearful that the defendants John H. Fahey and A. V. Ammann, immediately following the seizure of said Association, would merge, consolidate or otherwise com-

mingle the said Long Beach Federal Savings and Loan Association and its $26,000,000.00 of assets with some other financial institutions.

On or about March 29, 1946, the defendant A. V. Ammann, as the alleged Conservator by appointment of John H. Fahey, seized the Los Angeles Federal Home Loan Bank and its approximately $43,000,000.00 worth of assets, and within twenty-four hours allegedly liquidated, commingled, merged, consolidated or otherwise dissipated the Los Angeles Federal Home Loan Bank and its approximately $43,000,000.00 in assets, and forthwith allegedly merged and consolidated the same with the Portland Federal Home Loan Bank and its approximately $9,000,000.00 of assets and allegedly transferred the same to and created the San Francisco Federal Home Loan Bank.

That at the time of said seizure of the Los Angeles Federal Home Loan Bank, to wit: on or about March 29, 1946, the Long Beach Federal Savings and Loan Association had approximately $341,000.00 of the Los Angeles Federal Home Loan Bank, and in addition was entitled to an undivided interest in the profits of said Bank, which profits had a value of approximately $40,000.00, belonging to the Long Beach Federal Savings and Loan Association.

That subsequent to the seizure of the said Los Angeles Federal Home Loan Bank and prior to the seizure of the Long Beach Federal Savings and Loan Association, your affiant on behalf of the Long Beach Federal Savings and Loan Association was engaged in investigating and the preparation of a complaint to bring appropriate legal action to recover from the said defendants John H. Fahey and A. V. Ammann of the Federal Home Loan Bank Administration, the assets and profits belonging to the Long Beach Federal Savings and Loan Association, which they had so unlawfully seized.

That, by virtue of the seizure of the Long Beach Federal Savings and Loan Association on May 29, 1946, the defendants, John H. Fahey and A. V. Ammann, according to their alleged Rules and Regulations allegedly suspended and deprived your affiant, and the officers and directors of the Long Beach Federal Savings and Loan

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Association of their rights and powers to bring suit for and on behalf of the said Long Beach Federal Savings and Loan Association against the defendants
485 John H. Fahey and A. V. Ammann, to recover from said defendants and the Federal Home Loan Bank Administration the assets and equitable interest of the Long Beach Federal Savings and Loan Association in the undivided profits and assets so illegally seized by the defendants John H. Fahey and A. V. Ammann, when they seized the Los Angeles Federal Home Loan Bank.

That since the filing of this action conflicting demands have been made upon the Title Service Company, a California corporation, and it has interplead in this action 174 notes secured by Trust Deeds upon real estate in Southern California, said notes having an aggregate unpaid balance of nearly $800,000.00, and has filed its Cross Claim in the nature of interpleader, as to the remaining notes secured by Trust Deeds on approximately 8,000 Parcels of Southern California real estate, having an aggregate unpaid balance of approximately $12,000,000.00 on said notes on, all of which, said Title Service Company is the named Trustee.

That there has been filed in this action an intervener action for, and on behalf of, Home Investment Company of Long Beach, California, a California corporation, requesting an order to permit it to deposit with the Registry of this Court the unpaid balance on said 174 Notes and Trust Deeds amounting to approximately $800,000.00, and to authorize the reconveyance of title to said property by the said Title Service Company. The intervener, Home Investment Company of Long Beach is endeavoring to clear the clouds from the title to said properties, which clouds upon the title to said properties were caused and created by the seizure of said Long Beach Federal Savings and Loan Association and its assets, including such notes and trust deeds, by the defendants A. V. Ammann and John H. Fahey.

The defendant A. V. Ammann not being an official of, nor a duly elected officer of the Long Beach Federal Savings and Loan Association, who are the named
486 beneficiaries on trust deeds on approximately 8,000 Parcels of real property located in Southern.

California, he, therefore, would have no authority to sign requests to reconvey the titles to said properties by the Title Service Company, the named Trustee on said Trust Deeds, unless his appointment as Conservator of said Association was a valid appointment properly made and properly executed and performed.

Until the appointment of said A. V. Ammann as Conservator of the Long Beach Federal Savings and Loan Association has been judicially determined as either valid or invalid, there remains a cloud upon the title to said approximately 8,000 Parcels of real property in Southern California.

Your affiant is informed and believes and upon such information and belief alleges that Notices of lis pendens have heretofore been filed and recorded in Los Angeles County upon the Parcels of real property located in Los Angeles County.

That the defendant Fahey having revised the Federal Rules and Regulations of the Federal Home Loan Bank Board for Federal Savings and Loan Associations so as to free himself as aforesaid, from any requirements constituting due process such as prior notice, or hearing, or regulations specifying what acts would constitute grounds for seizure and without notice or hearing, or criticism, or opportunity to rectify caused the defendant Ammann to seize said Long Beach Federal Savings and Loan Association on said 20th day of May, 1946.

That defendant Fahey having provided no procedure for redress against his own unlawful or unwarranted acts or those of his assistants before any impartial tribunal and having provided no regular procedure to that effect is now, and at all times herein mentioned has been unwilling and has opposed and by his conduct in this action is opposing any hearing on the merits of the issues raised in this proceeding not controlled by himself and not dependant on his personal approval of any finding by his subordinates against himself.

That the plaintiffs, as a committee for the protection of the member shareholders of the Long Beach Federal Savings and Loan Association have been, and are being joined daily by large numbers of other shareholder members in requesting and praying for the

return to the shareholder members of the Long Beach Federal Savings and Loan Association of the management, operation and control of said Association and all of its $26,000,000.00 of assets; the said shareholder members being the true, equitable and mutual owners.

Dated: At Los Angeles, this 10th day of July, 1946.

T. A. Gregory.

T. A. GREGORY.

Subscribed and sworn to before me this 10th day of July 1946.

[SEAL] MAXINE LAUREL BERWEILER,
Notary Public in and for the County of Los Angeles, State of California.

488 Received copy of the within Affidavit this 10 day of July, 1946.

RAYMOND TREMAINE,
Attorney for Robert H. Wallis.

Received copy of the within Affidavit this 10 day of July, 1946.

JAMES M. CARTER,
U. S. Atty.
By W. ALLEN,
Attorneys for Amman & Fahey.

491 In the District Court of the United States

Affidavit of Harold Lee
Filed July 10, 1946

CITY OF WASHINGTON,
District of Columbia, ss:

Harold Lee being first duly sworn on oath deposes and says that he is Deputy Federal Home Loan Bank Commissioner of the Federal Home Loan Bank Administration and has full personal knowledge of the facts leading to and justifying the appointment of a conservator for the Long Beach Federal Savings and Loan Association; that the order appointing A. V. Ammann as conservator of the Long Beach Federal Savings and Loan Association was made by affiant pursuant to authority duly and regularly vested in him.

That on May 18, 1946, certain facts relative to the

administration of the Long Beach Federal Savings
492 and Loan Association and the acts of its officers and directors were developed by examiners of the Federal Home Loan Bank Administration in the regular examination provided by law; that said facts were communicated to affiant and in his opinion necessitated the immediate appointment of a conservator to conserve the assets of said association.

That the act of affiant in making the order appointing such conservator was in no sense a reprisal against T. A. Gregory or other officers or directors of the Long Beach Federal Savings and Loan Association, or based upon any other than the facts developed by said examiners and communicated to him.

HAROLD LEE.

Sworn to and subscribed before me, this Sixth day of July, A. D. 1946.

[SEAL] FREDERICK J. RAMSEY,
Notary Public.

My commission expires May 14, 1947.

494 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of Ray E. Dougherty
Filed July 10, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ray E. Dougherty, being first duly sworn, on oath deposes and says that he is Associate General Counsel for the Federal Home Loan Bank Administration and is personally familiar with all the facts hereinafter stated.

Affiant states that the former Federal Home Loan Bank of Los Angeles was liquidated and reorganized and its assets transferred to and its liabilities assumed by the present Federal Home Loan Bank of San Francisco under and by virtue of Federal Home Loan Bank Administration Orders Nos. 5082, 5083 and 5084, dated March 29, 1946, which orders were respectively issued under and by virtue of section 26 of the Federal Home Loan Bank

Act, section 3 of the Federal Home Loan Bank Act and section 25 of the Federal Home Loan Bank Act, copies of which orders are attached hereto and by reference made a part of this affidavit.

495 Affiant further states that he personally served said orders upon the officers then in charge of the Federal Home Loan Bank of Los Angeles and was present at the time the physical properties and assets of the former Federal Home Loan Bank of Los Angeles were taken over by the officers of the Federal Home Loan Bank of San Francisco.

Affiant further states that no conservator was ever appointed for the Federal Home Loan Bank of Los Angeles nor for any other Federal home loan bank.

Affiant further states that the rights of members of any Federal home loan bank to withdraw as a member of such bank and to receive reimbursement for its cash paid subscriptions for its capital stock in such Federal home loan bank, are fixed by the provisions of the Federal Home Loan Bank Act and particularly section 6(i) thereof, and that the rights and privileges of the Long Beach Federal Savings and Loan Association as a member of the former Federal Home Loan Bank of Los Angeles were in no way affected by such reorganization into the Federal Home Loan Bank of San Francisco, except that in the event of complete liquidation and distribution of the assets of the Federal Home Loan Bank of San Francisco subsequent to the effective time of the orders above referred to, the members of the former Federal Home Loan Bank of Los Angeles would have profited in that the book value of each share of stock had been increased by approximately $2; that the par value of each such share of stock was and is $100.

RAY E. DOUGHERTY.

Subscribed and sworn to before me this 10 day of July, 1946.

[SEAL]

Clerk, U. S. District Court,
Southern District of California.
By E. M. ENSTROM, JR.
Deputy.

496 FEDERAL HOME LOAN BANK ADMINISTRATION
Order No. 5082. Date March 29, 1946

Whereas, it has been and is hereby determined that the efficient and economical accomplishment of the purposes of the Federal Home Loan Bank Act, as amended, will be aided by the action contemplated herein; now, therefore,

It is hereby ordered that effective March 29, 1946, the Federal Home Loan Bank of Los Angeles shall be liquidated and reorganized and all assets and property of any kind or nature of such bank, including any unexpended amounts in approved and outstanding budgets and personnel but excluding officers and directors, are hereby transferred to the Federal Home Loan Bank of Portland and all the liabilities and obligations of such Federal Home Loan Bank of Los Angeles are to be assumed by the Federal Home Loan Bank of Portland and are hereby declared to be and become the liabilities and obligations of the Federal Home Loan Bank of Portland. The President of the Federal Home Loan Bank of Portland (hereinafter called Federal Home Loan Bank of San Francisco) is hereby authorized and directed to execute, issue or sign in the name of the Federal Home Loan Bank of Los Angeles or in the name of the Federal Home Loan Bank of San Francisco as the successor and legal assignee of the assets, property, liabilities and obligations of the Federal Home Loan Bank of Los Angeles such instrument or instruments as may be necessary or advisable and to cancel, assign or otherwise dispose of in whole or in part, any lease under which the Federal Home Loan Bank of Los Angeles has been bound or committed. All members of the Federal Home Loan Bank of Los Angeles are to become members of the Federal Home Loan Bank of Portland and the Federal Home Loan Bank of Portland (hereinafter called Federal Home Loan Bank of San Francisco) is ordered and directed to issue appropriate evidences of the ownership of all of the stock formerly held by the Federal Home Loan Bank of Los
Angeles including stock purchased and held on
497 behalf of the U. S. Government. The charter of
said Federal Home Loan Bank of Los Angeles is hereby cancelled.

It is further ordered and directed that effective March 29, 1946, the said Federal Home Loan Bank of Portland shall move and is hereby moved to the city of San Francisco, California, and shall be known hereafter as the Federal Home Loan Bank of San Francisco. Subject to the Federal Home Loan Bank Act, as amended, and the charter and by-laws of the Federal Home Loan Bank of San Francisco, including right of dismissal, said bank shall have as its directors, officers, employees, attorneys, and agents the directors, officers, employees, attorneys, and agents transferred, elected, designated, or appointed, to, by or for the Federal Home Loan Bank of Portland for the calendar year 1946 and shall operate under the charter and by-laws used by the Federal Home Loan Bank of Portland until duly changed.

It is further ordered and directed that effective March 29, 1946, and until changed by the Board of Directors of the Federal Home Loan Bank of San Francisco and approved by the Federal Home Loan Bank Administration, the said Federal Home Loan Bank of San Francisco shall maintain a branch of said bank in the cities of Portland, Oregon, and Los Angeles, California.

It is further ordered and directed that in order to provide for adequate representation of the states in the Federal Home Loan Bank of San Francisco region, effective August 1, 1946, the terms of all directors of said bank shall expire and that prior to July 1, 1946, a new election of directors shall be held. The terms of all officers of said bank shall expire upon the designation by the Board of Directors after August 1, 1946, of new officers and their approval by the Federal Home Loan Bank Administration. In such election and in future elections of the Federal Home Loan Bank of San Francisco the states of Nevada and Arizona shall constitute one state with the right of minimum representation to be alternated between each of said states within the rules and regulations and orders of the Federal Home
498 Loan Bank System providing for a minimum representation from each state in a Federal Home Loan Bank district. Order before July 1, 1946, the Federal Home Loan Bank Administration shall appoint or reappoint four public-interest directors whose terms shall

begin August 1, 1946, but shall end respectively December 31, 1946; December 31, 1947; December 31, 1948; and December 31, 1949.

It is further ordered and directed that the Federal Home Loan Bank of San Francisco shall take such other action subject to the approval of the Federal Home Loan Bank Administration as may be necessary or desirable for the effective operation of the Federal Home Loan Bank of San Francisco.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on March 29, 1946.

[SEAL] (S.) J. FRANCIS MOORE,
Secretary.

499 FEDERAL HOME LOAN BANK ADMINISTRATION
Order No. 5083. Date: March 29, 1946

Pursuant to Section 3 of the Federal Home Loan Bank Act, as amended, and the powers vested in me by law, the district of the Federal Home Loan Bank of Portland is readjusted and shall have added thereto the states of Arizona, California, and Nevada, and the Territory of Hawaii.

The said Federal Home Loan Bank of Portland is moved to San Francisco and shall be known as the Federal Home Loan Bank of San Francisco.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on March 29, 1946.

[SEAL] J. FRANCIS MOORE,
Secretary.

500 FEDERAL HOME LOAN BANK ADMINISTRATION
Order No. 5084. Date: March 29, 1946

Pursuant to Section 25 of the Federal Home Loan Bank Act, as amended, and the powers vested in me by law the Federal Home Loan Bank of Los Angeles is dissolved.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on March 29, 1946.

[SEAL] (S.) J. FRANCIS MOORE,
Secretary.

502 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of A. V. Ammann
Filed July 10, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

A. V. Ammann, being first duly sworn, on oath deposes and says that on May 20, 1946, he was appointed conservator for the Long Beach Federal Savings and Loan Association by Federal Home Loan Bank Administration Order No. 5254, copy of which is attached hereto and by reference made a part of this affidavit; that he immediately qualified and entered upon his duties and ever since said time has been conservator of said Association and that the facts hereinafter stated are personally known to affiant.

Affiant has read the affidavit of T. A. Gregory attached to the motion for preliminary injunction to restrain the holding of the administrative hearing and the same is not a true statement of the events and happenings occurring on the morning of May 20, 1946, at the time affiant took possession of the affairs of the Association.

Affiant states that on May 20, 1946, affiant entered the Association at approximately 8:35 A.M.; that within two or three minutes thereafter affiant met Mr. T. A.
503 Gregory in the president's room at the office of the Association and immediately told Mr. Gregory that the Federal Home Loan Bank Administration had that morning appointed affiant conservator for the Association and that this action had been taken because of acts and practices on the part of the officers and directors considered by the Federal Home Loan Bank Administration as injurious to and jeopardizing the interests of the members and creditors of the Association and of the public; that the immediate effect of this action was to relieve the officers and directors of all authority and that it placed the conservator in their stead. Mr. Gregory asked affiant for a certified copy of the order and affiant ex-

plained that the order was in full force and effect upon its entry in Washington; that there had not been time for a certified copy to reach Long Beach from Washington, but that such copy was being brought by airplane and would arrive later that day. Affiant explained further that the order had been read to him over the telephone; that he had written it down and had typewritten it from the notes taken over the telephone and that affiant would give Mr. Gregory the copy he had made, with the understanding that such minor typographical differences as there might be between affiant's copy and the copy being brought from Washington would be considered corrected by the latter. In affiant's capacity as Assistant Secretary for the Federal Home Loan Bank Administration the copy was then certified and delivered to Mr. Gregory.

At no time during the conversation did affiant threaten Gregory with criminal prosecution unless Gregory delivered up and surrendered possession of the property in the Association to affiant; the true facts concerning this particular matter are as follows:

Within the first five minutes of our meeting Mr. Gregory stepped outside his office doors and gave instructions to some one. These instructions were not fully understood by me. Later he again stepped outside the door and asked one of the employees to instruct the men who were waiting not to go away because he might want to have some one arrested. Gregory then told affiant
504 that men were outside who at his word would take or lead me out of the office. I told him they wouldn't lead me but would have to carry me. I advised him in his own best interest to refrain from any physical actions of resistance because I was sure that that would embarrass him and that he might thus risk serious consequences under the law.

Affiant specifically denies the statement made by Mr. Gregory in his affidavit as follows:

"That at the time of said seizure your affiant heard one Ben O. Reddick ask the said A. V. Ammann 'Why are you here?' and heard the said A. V. Ammann reply, 'If it gets in the paper we are here, it will create a run and tear down the institution, that's why we are here'.

The said A. V. Ammann, upon being further questioned by the said Ben O. Reddick, repeated his statement."

Affiant states that the said Ben O. Reddick mentioned in Mr. Gregory's affidavit is reported to be the reporter for the Los Angeles Examiner who appeared at the Association's offices shortly after affiant had arrived at such offices; that affiant is informed and believes that the said Reddick came at the request of Mr. Gregory; that affiant told Reddick that the public interests and the interests of the Association would be best served by avoidance of sensational publicity relative to the matter since such publicity would inevitably tend to cause a run upon the Association and that the conservator was in the Association to conserve its assets and carry on its operation in a proper and lawful manner until further disposition could be made of its affairs. Affiant states that in spite of such statements and requests by affiant to the said Reddick, distorted and misleading statements appeared in the Los Angeles Examiner, many of such news items containing alleged quotations from Mr. Gregory, which were not true statements of fact.

Affiant further states that the said Reddick not only gave such statements to his paper, but engaged in
505 other activity in and around the Association, which instead of quieting the public hysteria induced by the said newspaper statements, added to such hysteria; that on certain occasions when there were a large number of people in the Association being served by the tellers at the counter, Reddick would walk up and down on the counters in order to take pictures of the crowd of people in the institution; that he would climb on desks and file cabinets back of the counters where the tellers were working and take pictures with a flash bulb, thus adding to the hysteria and confusion which was then existent in the institution and otherwise demeaned himself in a manner which indicated that his every action was motivated by the desire to get "scarehead and sensational news" and to serve the interests and purposes of Gregory in attempting to discredit the action of the Federal Home Loan Bank Administration rather than in any manner to attempt to serve the public interests and the interests of the shareholders of this institution.

Affiant states that he did not give Mr. Gregory a receipt for the assets of the Association for the reason that such assets did not belong to Mr. Gregory but did belong to the Association and for the further reason that the delivery of a detailed receipt at that time was impossible as neither Mr. Gregory nor any one else had a current inventory of the assets of the Association; and further states that affiant as conservator is carefully complying with the provisions of Section 207.8(a) of the Rules and Regulations for the Federal Savings and Loan System, which section reads as follows:

"(a) Inventory. As soon as practicable after taking possession, the conservator shall make an inventory of the assets of such association as of the date of such taking possession, showing the value as carried on the books of the association, and the security therefor, if any, in whatever form the same shall exist, with a brief description of each such asset and such security. Such assets may be listed in such groups or classes as
506 shall, to the satisfaction of the Governor of the Federal Home Loan Bank System, or any Deputy or Assistant Governor, afford full information as to their character and book value, and the conservator shall include a record of the creditor and share liabilities of the association. One copy of such inventory shall promptly be filed with the Secretary to the Federal Home Loan Bank Administration, one copy with the Office of the Governor of the Federal Home Loan Bank System, and one copy shall be retained in the principal office of the association, so long as such office is maintained by the conservator."

Affiant further states that he has read the complaint of the plaintiffs wherein among other false statements therein contained, there appears at paragraph 10 thereof, the following:

"That the said A. V. Ammann was and is the purported conservator for said Federal Home Loan Bank of Los Angeles."

That this affiant is not and never has been the conservator or purported conservator of the former Federal Home

Loan Bank of Los Angeles nor of any other Federal home loan bank.

A. V. AMMANN.

Subscribed and sworn to before me this 9th day of July, 1946.

[SEAL] GEORGE M. BRYANT,
Notary Public.

My commission expires April 2, 1949.

507 FEDERAL HOME LOAN BANK ADMINISTRATION

Order No. 5254.
Date: May 20, 1946.

Whereas, it has been determined that the Long Beach Federal Savings and Loan Association, Long Beach, California:

Is conducting its business in an unlawful manner;

Is conducting its business in an unauthorized manner;

Is conducting its business in an unsafe manner;

Has a management which is unsafe to manage a Federal savings and loan association;

Has a management which is unfit to manage a Federal savings and loan association;

Is pursuing a course that is jeopardizing the interests of its members;

Is pursuing a course that is jeopardizing the interests of its creditors;

Is pursuing a course that is jeopardizing the interests of the public;

Is pursuing a course that is injurious to the interests of its members;

Is pursuing a course that is injurious to the interests of its creditors; and

Is pursuing a course that is injurious to the interests of the public; and

Whereas, it has been determined to be in the interest of said association, its members, creditors, and the public to appoint a conservator to take possession of said association and to conserve its assets pending further disposition of said association and its affairs;

Now, therefore, A. V. Ammann is hereby appointed conservator for the Long Beach Federal Savings and

Loan Association, Long Beach, California, to take possession of said association and to conserve its assets pending further disposition of said association and
508 its affairs; and, as such conservator, to have and exercise all of the powers and rights, enjoy all of the privileges, and assume and perform all of the duties and responsibilities of his office accorded or imposed by law, the Rules and Regulations for the Federal Savings and Loan System, and orders issued by the Federal Home Loan Bank Administration, or otherwise.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on May 20, 1946.

[SEAL] (S.) J. FRANCIS MOORE,
Secretary.

510 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit in opposition to motion to dismiss or to quash return of service of summons
Filed July 10, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

S. I. Bacon, being first duly sworn, deposes and says: That he is one of the officers, to-wit: the Vice-President of the Title Service Company, one of the Defendants and a Cross-Claimant in Interpleader, in the above entitled and numbered action.

That heretofore and subsequent to the commencement of this action, and after the filing of the Answer and Cross-Claim in Interpleader of Title Service Company and the concurrent deposit with the Clerk of the Registry of this Honorable Court of 174 promissory notes and deeds of trust, the Defendant, A. V. Ammann, as
511 the purported Conservator of the Defendant Long Beach Federal Savings and Loan Association, commenced proceedings to substitute another and different trustee, in the place and stead of the Title Service Com-

pany under said deeds of trust. That said deeds of trust contain a proviso allowing the substitution of trustees with the consent of the named beneficiary, said Long Beach Federal Savings and Loan Association, and that said A. V. Ammann, as the purported Conservator of said Association, apparently was seeking to substitute trustees thereunder in order to obtain reconveyances of said trust deeds, notwithstanding the filing of said cross-claim in interpleader and the deposit with the Registry of this Court of said trust deeds. That affiant is informed and believes, and on that ground alleges, that said A. V. Ammann negotiated with and solicited the Bank of America National Trust and Savings Association to accept such substitution and to act as substituted trustee.

That upon such negotiations becoming known to the Defendant, Title Service Company, in order to protect its rights under said trust deeds and to prevent the attempted ouster of jurisdiction of this Court by such substitution of trustees, did cause to be filed for record in the office of the County Recorder of Los Angeles County, California, the county wherein the real property described in said deeds of trust is located, a Lis Pendens, pursuant to the provisions of Section 409 of Code of Civil Procedure of the State of California. That said Lis Pendens was filed for record by Thomas and Wallace, the attorneys for said Title Service Company on the 27th day of June, 1946. That in addition to the 174 parcels of real property described in the trust deeds physically deposited with the Registry of this Court in said Cross-Claim in Interpleader, said Lis Pendens also referred to and described so many of the other parcels of real property as were known to said Title Service Company,
512 and which were referred to in said Cross-Claim in Interpleader and were brought before this Court thereby in the nature of interpleader. That the total number of parcels of real property, all located in the County of Los Angeles and State of California, described in said Lis Pendens was approximately 3700. That the book and page of such recording is not known to affiant, the original document not having been received back from the office of the County Recorder as of this date.

That in addition to the reasons hereinabove set forth for the preparation and recording of said Lis Pendens, the recording of the same was deemed necessary by reason of the continued demands of said Defendant, A. V. Ammann, as the purported Conservator of said Long Beach Federal Savings and Loan Association, for reconveyances of deeds of trust in the possession of said A. V. Ammann, delivered to Title Service Company, since the filing of the Cross-Claim in Interpleader herein. That no proof of the authority of the said A. V. Ammann, as the purported Conservator, has ever been presented to the Title Service Company and that it has no actual notice of his appointment of such, nor of the authority purportedly granted to him. That the prayer of said cross-claim, among other things, prayed that the Defendants having said trust deeds in their possession, including the said A. V. Ammann, be required to deliver the same into the Registry of this Court, and that the adverse claimants set forth their respective claims thereto. That in the body of said cross-claim in interpleader it was alleged that the Defendant, Long Beach Federal Savings and Loan Association had, on the 3rd day of June, 1946, advised the said Title Service Company, in writing, that it, the said Long Beach Federal Savings and Loan Association, did not recognize the authority of the said A. V. Ammann and that it had not authorized him to execute any requests for reconveyances on its behalf and directing it not to reconvey upon the strength of such requests and further stating that if the said Title Service
513 Company did so reconvey, and such reconveyances were held to have been executed and delivered without proper authority that the said Long Beach Federal Savings and Loan Association would hold Title Service Company liable in damages for any damages suffered thereby. That affiant is informed and believes that this information was known to the Defendant Ammann by reason of service upon him of a copy of said cross-claim. That notwithstanding such knowledge in said Ammann, and after such service upon him, he continued to deliver to Title Service Company requests for reconveyances and that since said time he has delivered to Title Service Company eighteen (18) such requests for reconveyances, executed by himself as the purported Con-

servator of said Long Beach Federal Savings and Loan Association.

In view of all of the foregoing, it is respectfully submitted on behalf of the Title Service Company that the pending motions for dismissals should be denied and that the returns of summons should not be quashed, and that the entire matter should be heard and decided on the merits.

S. I. BACON.

Subscribed and sworn to before me this 10th day of July, 1946.

[SEAL] HAZEL ROBERTS,
Notary Public in and for said County and State.

517 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of Robert H. Wallis
Filed July 10, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Robert H. Wallis, being first duly sworn, deposes and says:

That he is a resident of the City of Long Beach, County of Los Angeles, State of California, and that on or about the 10th day of June, 1946, was in Washington, D. C., and at that time checked the current telephone directory and that the name of A. V. Ammann, 9507 Bruce Drive, Silver Spring, Maryland, appeared therein, and that upon such information, affiant states that A. V. Ammann is a citizen of the State of Maryland.

ROBERT H. WALLIS.

Subscribed and sworn to before me this 10th day of July 1946.

[SEAL] BERTHA E. CUMPTON,
Notary Public in and for said County and State.
My commission expires Dec. 26, 1949.

518 Received copy of the within Affidavit this 10 day of July, 1946.

JAMES M. CARTER,
U. S. Atty.

By A. ALLEN,
Attorneys for Ammann & Fahey.

519 In United States District Court

[Title omitted.]

Order designating two additional judges, pursuant to 28 USCA Sec. 380a, to participate in the above hearing

Filed July 12, 1946

Pursuant to Title 28, Section 380a, of the United States Code, I hereby designate and appoint the Honorable William E. Orr, United States Circuit Judge, and the Honorable David W. Ling, United States District Judge, to participate with the Honorable Peirson M. Hall, United States District Judge, in the hearing and determination of the above application, which shall not be heard or determined before at least five days' notice of the hearing has been given to the Attorney General and to such other persons as may be defendants in the suit. Previous designations revoked.

Dated, San Francisco, California, this 9th day of July, 1946.

FRANCIS A. GARRECHT,
Senior United States Circuit Judge for the Ninth Judicial Circuit.

[File endorsement omitted.]

520 In United States District Court

[Title omitted.]

Minute order

July 12, 1946

This cause coming on ex parte; J. Henry McCasek, Esq., appearing for the Intervener, Home Investment Company of Long Beach; Harry O. Wallace, Esq., appearing for the Title Service Co.; Ray F. Dougherty, Esq., Associate General Counsel, Home Loan Bank Board, appearing, and Ronald Walker, Esq., Asst. U. S. Attorney, appearing for A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association.

The Court informs counsel as follows: "I have signed an order directing the deposit in Court of the sum of $778,927.90, plus interest subsequent to June 30, 1946,

directing the execution of 174 trust deed reconveyances, the manner of payment and other things. The order is approved as to form by counsel for all of the parties who have heretofore appeared. While the order is signed, it will be merely lodged with the Clerk and the Clerk is directed to file it only when the Home Investment Co. of Long Beach deposits the sum of money therein required by the order to be deposited by them and the Title Service Co by actual reconveyances on all of the trust deeds. They will be ordered lodged with the Clerk and to be filed upon the same conditions. The requests for reconveyances of the 174 trust deeds heretofore lodged with the Clerk by the Long Beach Federal Savings and Loan Association and now held by him will be filed likewise upon the same conditions, so that simultaneously they will be filed, the requests for reconveyances by the Long Beach Federal Savings and Loan Association, the reconveyances by the Title Service Co., the order which I have just signed, and the sum of money approximating $800,000.00, the precise amount being set forth in the order.

521 I will make the further provision that the requests for reconveyances and the reconveyances shall be returned to the parties upon demand and the order returned to me for destruction of my signature by the Clerk unless the money is on deposit with the Clerk in compliance with the terms of the order on or about Wednesday, July 17, 1946, at 5 P.M."

522 In United States District Court

[Title omitted.]

Minute order

July 15, 1946

This cause coming on for hearing on the following matters:

(1) Motion of plaintiff for a preliminary injunction to restrain defendants from merging or consolidating the Long Beach Federal Savings and Loan Association or its assets with other institutions, and to take testimony and evidence at the hearing thereof, pursuant to notice thereof, filed June 14, 1946:

(2) Motion of A. V. Ammann, both individually and as Conservator for the Long Beach Federal Savings and Loan Association to dismiss, pursuant to notice thereof, filed June 14, 1946;

(3) Motion of plaintiffs for preliminary injunction to restrain the holding an an administrative hearing by the Federal Home Loan Bank Administration, et al., pursuant to notice thereof, filed June 20, 1946;

(4) Motion of interpleader, Title Service Co., for a preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, et al., pursuant to notice thereof, filed June 28, 1946;

(5) Motions of the plaintiffs to continue in force the temporary restraining orders to restrain the merging of the said Long Beach Federal Savings and Loan Association with any other institutions; and to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, until the final adjudication and determination on the motions for a preliminary injunction, pursuant to notice thereof, filed July 5, 1946;

523 (6) Motion of defendant John H. Fahey, individually, and as Chairman of the Federal Home Loan Bank Board, to dismiss or in lieu thereof, to quash service of summons, pursuant to notice thereof, filed July 5, 1946;

(7) Motion of defendant A. V. Ammann, individually, and as a Conservator for the Long Beach Federal Savings and Loan Association to dismiss answer and cross-claim in interpleader of Title Service Co., and Robert H. Wallis, pursuant to notice thereof, filed July 5, 1946:

Wyckoff Westover and Steadman G. Smith, Esqs., appearing for the plaintiffs; H. O. Wallace, Esq., appearing for Title Service Co.; Raymond Tremaine, Esq., appearing for defendant and cross-complainant R. H. Wallis; Chas. M. Chapman, Esq., appearing for Long Beach Federal Savings & Loan Association; James M. Carter, Esq., United States Attorney, and Ronald Walker, Esq., Assistant United States Attorney, appearing for defendant A. V. Ammann, individually, and as Conservator for the Long Beach Federal Savings & Loan Associa-

tion; Ray E. Dougherty, Esq., Associate General Counsel, appearing for Home Loan Bank Administration:

On motion of Attorney Walker, it is ordered that Moe Silverman, Esq., may be admitted as associate counsel for the purpose of this case only.

Attorney Westover orally moves to amend the complaint, and there being no objections to said motion, the same is ordered granted and amendment ordered filed.

Attorney Chapman informs the Court, and orally gives notice to counsel for defendants Ammann and Fahey, that the Board of Directors of the Long Beach Federal Savings & Loan Association have resolved to meet and pass a resolution that approximately $800,000.00 be deposited with the Clerk of this Court in lieu of 174 trust deeds now on deposit with the Clerk.

Attorney Westover now argues to the Court in support of motion for an injunction, and on motion of said attorney, and there being no objections thereto, it is ordered that the temporary restraining order and order restraining administrative hearing be continued in full force and effect until the determination of this three-judge Court re the question of constitutionality at issue herein.

524 Attorney Westover continues his argument.

The Court of three judges informs counsel that this Court will consider, only, the question of the constitutionality of the Statute and any questions arising beyond that may be heard by a District Judge or a one-man Court.

Attorney Chapman argues in support of the preliminary injunction.

Attorney Wallace argues in support of the temporary restraining order to restrain the administrative hearing.

At 3:55 P.M. Court recesses and reconvenes at 4:20 P.M.; all present as before.

Attorney Tremain argues in support of the preliminary injunction.

Attorney Chapman argues further.

At 4:45 P.M. Court recesses herein until 10 A.M., July 16, 1946.

525 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Notice of hearing by court composed of three judges (pursuant to Section 380 (a) of Title 28 of Judicial Code)

Filed July 15, 1946

To the Attorney General of the United States; John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board (also known as Commissioner of the Federal Home Loan Bank Administration) Defendant; A. V. Ammann, individually, and A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, Defendant herein, James M. Carter, United States Attorney and Ronald Walker, Assistant United States Attorney and Mildred Kluckhohn, Assistant United States Attorney, Attorneys for A. V. Ammann; Title Service Company, Defendant and Cross-Claimant in Interpleader, and Thomas and Wallace by Harry O. Wallace, Esquire, Attorneys for Title Service Company; and
526 Robert H. Wallis, Defendant and Cross-Claimant in Interpleader; and Raymond Tremaine, his attorney; and Home Investment Company of Long Beach, Intervener; and F. Henry NeCasek, Esquire, its attorney:

You, and each of you, are hereby notified and you will please take notice that the Honorable Peirson M. Hall, Judge of the United States District Court of the United States Southern District of California, Central Division, has by Order heretofore made and issued on the 1st day of July 1946, set for hearing by a Court composed of Three Judges, commencing at 2:00 o'clock P. M., on Monday, the 15th day of July, 1946, in the Courtroom of the Honorable Peirson M. Hall, Judge of the United States District Court in the Federal Building at Los Angeles, California, the following Motions and matters:

(a) Motion by Plaintiffs for a Preliminary Injunction to restrain the Defendants from merging or consolidat-

ing the Long Beach Federal Savings and Loan Association or its assets with other institutions, and to Take Testimony and Evidence at the Hearing thereof.

(b) Motion of the Plaintiffs for Preliminary Injunction to Restrain the Holding of an Administrative Hearing by the Federal Home Loan Bank Administration, et al.,

(c) Motion of Defendants, A. V. Ammann, both individually, and as Conservator for the Long Beach Federal Savings and Loan Association to Dismiss the said action.

(d) Motion by Interpleader, Title Service Company for Preliminary Injunction to Restrain the Holding of an Administrative Hearing by the Federal Home Loan Bank Board or Administration, et al.

At said time and place, Motions will also be made by the Plaintiffs to continue in force the Temporary
527 Restraining Orders to Restrain the merging of the said Long Beach Federal Savings and Loan Association, with any other institutions; and

To restrain the Holding of an Administrative Hearing by the Federal Home Loan Bank Board or Administration;

Until the final adjudication and determination on the now pending said Motions for Preliminary Injunction to Restrain the merger of said Association and to Restrain the Holding of said Administrative Hearing.

Dated at Long Beach, California this 5th day of July, 1946.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant Long Beach Federal Savings and Loan Association.

528 In the District Court of the United States

[Title omitted.]

Receipt for service of notice of hearing by court composed of three judges

Receipt is hereby acknowledged of service upon us of a true copy of the notice of hearing by court composed of three judges (pursuant to Section 380 (a) of Title 28 of

Judicial Code) on the date opposite our signatures, said notice being served by defendant Long Beach Federal Savings and Loan Association:—

THOMAS AND WALLACE,
By H. O. WALLACE,
Attorneys for Title Service Company, Defendant and Cross-Claimant in Interpleader.
July 5, 1946.

F. HENRY NECASEK,
Attorney for Home Investment Company of Long Beach, Intervenor.
WESTOVER AND SMITH,
By WYCKOFF WESTOVER,
Attorneys for Plaintiffs.
July 5, 1946.

529 Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for Robert H. Wallis, Defendant and Cross-Claimant in Interpleader.
July 5, 1946.

530 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail of notice of hearing by court composed of three judges

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Alice L. Kingsbury, being first duly sworn, deposes and says:

That she is, and at all times herein mentioned was, a citizen of the United States, residing in the City of Long Beach, County of Los Angeles, State of California, where the mailing herein referred to took place; that she is over the age of eighteen years and not a party to the above entitled action, nor interested in the event thereof; that on the 6th day of July, 1946, she enclosed in three separate envelopes a full, true and correct copy of the within Notice of Hearing by Court Composed of Three Judges Pursuant to Section 380 (a) of Title 28 of Judicial

Code), sealed each envelope and addressed one of
531 the envelopes to each of the following named persons, to-wit:

(1) United States Attorney General, Washington, D. C.

(2) Hon. James M. Carter, United States Attorney; Hon. Ronald Walker, Assistant United States Attorney; and Hon. Mildred Kluckhohn, Assistant United States Attorney, United States Attorney's Office, Sixth Floor, United States Postoffice and Courthouse Building, Los Angeles 12, California.

(3) Mr. John H. Fahey, 101 Indiana Avenue, Washington, D. C., and on said day, she deposited each envelope so addressed and with the postage thereon fully prepaid, registered mail in the United States Postoffice in the City of Long Beach, County of Los Angeles, State of California, and received the following receipts for registered mail, with the following registered numbers, respectively:

(1) United States Attorney General, Registry No. 50258;

(2) Mr. John H. Fahey, Registry No. 50259; and

(3) Hon. James M. Carter, United States Attorney, etc. Registry No. 50257.

That there is and at all times herein mentioned was, a regular commupication by United States mail between the City of Long Beach, the City of Los Angeles, California, and the City of Washington, D. C.

ALICE L. KINGSBURY.

Subscribed and sworn to before me this 8th day of July, 1946.

[SEAL] MARIE R. ECKLES,
Notary Public in and for the County of Los Angeles State of California.

My commission expires Aug. 13, 1947.

532 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Amendments to complaint—Filed July 15, 1946

The plaintiffs herein respectfully submit motion to amend their Complaint in enumerated particulars to make the same more clear and definite; and

The plaintiffs herein respectfully submit these Points and Authorities in reply to:

1. Memorandum of defendant A. V. Ammann in opposition to Restrain Merger, etc. and

2. Memorandum of defendant A. V. Ammann in opposition to Motion for Preliminary Injunction to restrain the Holding of an Administrative Hearing.

WESTOVER & SMITH,
By: Wyckoff Westover,
WYCKOFF WESTOVER,

533 AMENDMENT TO THE COMPLAINT

Come now, the plaintiffs, and pursuant to the provisions of Rule 15 of the Federal Rules of Civil Procedure respectfully request leave of this Honorable Court to amend their Complaint, and that the Complaint be hereby amended in the following particulars:

1. That Paragraph I, on Page 3, after subdivision (d) at line 15, be amended thereto by adding subdivision (e).

"The plaintiffs are now informed and upon such information allege:"

"That the defendant John H. Fahey is a resident of Swampscott in the State of Massachusetts." (See affidavit of Ray E. Dougherty attached to the Motion to Dismiss of John H. Fahey); and

"That the defendant A. V. Ammann is a resident of the State of Maryland." (See affidavit of Robert H. Wallis heretofore filed.)

"That diversity of citizenship exists between the plaintiffs, residents of California, and various of the defendants non-residents of the State of California."

2. That paragraph IV on Page 5 at line 18, in order to more definitely comply with Rule 24 (b) Federal Rules of Civil Procedure be amended by adding thereto:

"That this action is not a collusive one to confer on a Court of the United States, jurisdiction of any action of which it would not otherwise have jurisdiction."

"That the plaintiffs were on the 20th day of May, 1946, and still are shareholder members and have not made an effort to secure from the managing directors of the Long Beach Federal Savings and Loan Association, action to

enforce the rights here asserted because so to do would have been an idle act for the following reasons:"

"(a) If the acts here in question, are unconstitutional the officers and directors of said Association would
534 not have statutory authority to act for the Association.

(b) If the Acts, here in question are held to be constitutional and the Federal Regulations are held to be valid they deprive the officers and directors of said Association of authority to institute legal action on behalf of the Association and provide that:

"Such officers and directors, or any of them, shall not hereafter have, exercise, or act in connection with, any such rights, powers, or privileges, or any asset or property of any nature of the Association;"—(Federal Regulations Part VI—Sec. 207.3—adopted by the defendant John H. Fahey as Federal Home Loan Bank Administrator, August 15, 1943.)

3. That Paragraph VIII on Page 8 at Line 20 be amended by adding thereto:

"That no legal grounds or justification existed for the appointment of the purported Conservator, the defendant A. V. Ammann, by the defendant John H. Fahey.

4. That Paragraph XII on Page 13 at line 22 be amended by adding thereto:

"That neither the Home Owners Loan Act of 1933, as amended nor any of the rules or regulations of the Federal Home Loan Bank Administration provide, nor afford, any administrative remedy, or relief for the shareholder members of any Federal Savings and Loan Association, either before or after the seizure of such an Association by a purported Conservator therefore." That on and after May 20, 1946, there did not exist any administrative remedy for these plaintiff shareholder members of the Long Beach Federal Savings and Loan Association to exhaust.

535 That Paragraph (a) and (d) of Section 1464 of Title 12 of the Home Owners Loan Act of 1933 of the Federal Code are repugnant to the Constitution of the United States, and the rules and regulations promulgated pursuant thereto and thereunder by the Federal Home Loan Bank Board, Administration, and/or com-

missioner are contrary to, and repugnant to the Constitution of the United States and are void.

The above amendments are offered pursuant to the provisions of Rule 15 of the Rules of Civil Procedure in order clarify and make more definite the pleading in order that all issues may be settled in a single suit.

Amendments to pleading may be offered subsequently to the filing of a Motion to Dismiss and a Hearing thereon.

Kingan & Co. v. Smith (D. C. Ind), 16 F. Supp. 549.
Craig v. Gage, 25 F. (2d) 326.
Dollar Steamship Co. v. Mertz, 68 F. (2d) 594.

Dated: At Los Angeles, this 15th day of July, 1946.

Respectfully submitted,

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

536 Received copy of the within document this 15th day of July, 1946.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Deft. Long Beach Federal Savings and Loan Assoc.

Received copy of the within document this 15th day of July, 1946.

H. O. Wallace,
THOMAS & WALLACE,
Attorneys for Title Service Company, Defendant.

Received copy of the within document this 15th day of July, 1946.

Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for Deft. and cross-complainant, R. H. Wallis.

Received copy of the within document this 15th day of July, 1946.

JAMES M. CARTER,
U. S. Atty.
By GERTRUDE M. JOHNSON,
Atty. for Defts. J. H. Fahey and A. V. Ammann.

537 In the District Court of the United States

Affidavit of service by mail of plaintiffs' points and authorities in opposition to motion to dismiss and to quash service of summons on defendant John H. Fahey; and amendments to complaint, and plaintiffs' points and authorities in reply to Ammann's opposing injunction re merger

Filed July 22, 1946

Fay Dealey, being first duly sworn, says: that affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 1009 Pacific Southwest Building, 215 West 6th Street, Los Angeles 14, California, that on the 15th day of July, 1946, affiant served the plaintiffs' points and authorities in opposition to motion to dismiss and to quash service of summons on defendant John H. Fahey; and amendments to complaint, and plaintiffs' points and authorities in reply to Ammann's opposing injunction re merger on defendant, John H. Fahey in the above entitled matter, by mailing to him a true copy addressed as follows:

Mr. John H. Fahey, Federal Home Loan Bank Commissioner, Federal Home Loan Bank Building, Washington, D.C.

538 and then by sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the persons by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, and there is a regular communication by mail between the place of mailing and the place so addressed.

Fay Dealey
FAY DEALEY.

Subscribed and sworn to before me this 15th day of July, 1946.

MAXINE LAUREL BERWEILER,
Notary Public in and for the County of Los Angeles, State of California.

539 In United States District Court

[Title omitted.]

Minute order—July 16, 1946

This cause coming on for further hearing on (1) motion of the plaintiffs for a Preliminary Injunction to restrain the defendants from merging or consolidating the Long Beach Federal Savings & Loan Association or its assets with other institutions, and to take testimony and evidence at the hearing thereof, pursuant to notice thereof filed June 14, 1946; (2) motion of A. V. Ammann, both individually and as Conservator for the Long Beach Federal Savings & Loan Association to dismiss, pursuant to notice thereof filed June 14, 1946; (3) motion of the plaintiffs for Preliminary Injunction to restrain the holding of an Administrative Hearing by the Federal Home Loan Bank Administration, et al., pursuant to notice thereof filed June 20, 1946; (4) motion of Interpleader, Title Service Co., for a Preliminary Injunction to restrain the holding of an Administrative Hearing by the Federal Home Loan Bank Board or Administration, et al., pursuant to notice thereof filed June 28, 1946; (5) motion of the plaintiffs to continue in force the Temporary Restraining Orders to restrain the merging of the said Long Beach Federal Savings & Loan Association with any other institutions; and, to restrain the holding of an Administrative Hearing by the Federal Home Loan Bank Board of Administration, until the final adjudication and determination on the motions for a Preliminary Injunction, pursuant to notice thereof filed July 5, 1946; (6) motion of defendant John H. Fahey, individually, and as Chairman of the Federal Home Loan Bank Board, to dismiss or in lieu thereof to quash service of summons, pursuant to notice thereof filed July 5, 1946; and (7) motion of defendant A. V. Ammann, individually,
540 and as Conservator for the Long Beach Federal Savings & Loan Association, to dismiss answer and cross-claim in interpleader of Title Service Co., and Robert H. Wallis, pursuant to notice thereof filed July 5, 1946; Messrs. Westover and Smith by Wyckoff Westover, Esq., and Steadman G. Smith, Esq., appearing as

counsel for the plaintiffs; Messrs. Thomas and Wallace, by H. O. Wallace, Esq., appearing as counsel for the Title Service Co.; Raymond Tremaine, Esq., appearing as counsel for defendant and cross-complainant, R. H. Wallis; Chas. K. Chapman, Esq., appearing as counsel for the Long Beach Federal Savings and Loan Association; James M. Carter, U. S. Attorney, by Ronald Walker, Assistant U. S. Attorney, appearing as counsel for defendant A. V. Ammann, individually, and as Conservator for the Long Beach Federal Savings and Loan Association; and Ray E. Dougherty, Esq., Associate General Counsel, Home Loan Bank Administration, being present:

Attorney Walker argues in opposition to plaintiffs' motion for a preliminary injunction, etc. At 11:02 A.M. court recesses. At 11:19 A.M. court reconvenes, and all being present as before, Attorney Walker resumes his argument in opposition to plaintiffs' motion for preliminary injunction. Attorney Westover replies to the said argument of Attorney Walker. At noon court recesses until 2 P.M. At 2:01 P.M. court reconvenes, and all being present as before, Attorney Westover resumes his argument in reply to counsel for Commissioner for Conservator.

Attorney Wallace replies in behalf of the Title Service Co. Attorney Tremaine replies in behalf of R. H. Wallis, cross-complainant. Attorney Chapman argues in reply in behalf of defendant Long Beach Federal Savings and Loan Association. Attorney Walker argues in support of defendants' motion to dismiss. The Court orders that the question of the constitutionality of the Home Loan Bank Act be submitted on filing of briefs simultaneously.

544 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order extending time to answer cross claim of defendant Long Beach Fed. Sav. & Loan Association

Filed July 19, 1946

Certain phases of the above entitled matter having been submitted after argument to a three judge court for

decision as to the constitutionality of the Home Owners Loan Act of 1933, as amended, and it appearing that the time to answer the cross claim of defendant Long Beach Federal Savings and Loan Association should be extended until after the decision of said three judge court,

It is hereby ordered that the time within which defendant A. V. Ammann, individually and as the purported Conservator for the Long Beach Federal Savings and Loan Association, to answer or otherwise plead to the cross claim of defendant Long Beach Federal Savings and Loan Association be, and it hereby is, extended to and including August 19, 1946.

Dated July 18, 1946.

PEIRSON M. HALL,
United States District Judge.

545 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order directing execution of 174 trust deed reconveyances, directing manner of payment, and defining rights of parties

Filed July 20, 1946

546 An Order having been regularly issued and served requiring the Plaintiffs and Defendants to appear and show cause, if any they had, why, among other things, they should not be required to do and abide by the things hereinafter ordered, and the same having come on regularly for hearing on the 8th day of July, 1946, in Court Room No. 3 of the above-entitled Court, and proof having been made, and the Court finds that service of the aforesaid Order, together with a copy of Intervener's petition and Complaint, had been made on all parties plaintiffs and defendants in accordance with the requirements of the aforesaid Order, now comes F. Henry Ne Casek, attorney for the Intervener, Home Investment Co. of Long Beach, a corporation; Messrs. Westover & Smith, attorneys for the Plaintiffs herein: Messrs. Thomas & Wallace, attorneys for Title Service Company, a corporation; Raymond Tremaine, attorney for Robert H. Wallis;

Charles K. Chapman, attorney, for The Long Beach Federal Savings & Loan Association, an association organized and existing under and by virtue of the laws of the United States of America; James M. Carter, United States District Attorney, attorney for A. V. Ammann, individually and as Conservator of The Long Beach Federal Savings & Loan Association; and the defendant John H. Fahey, individually, and as Federal Home Loan Bank Commissioner and/or as Chairman of the Federal Home Loan Bank Board, having been served with a copy of the Order To Show Cause, together with a copy of Intervener's petition and complaint, in compliance with the requirements of the aforesaid order, and having failed to appear and answer hereto; and evidence having been introduced and the matter submitted to the Court for decision, the Court now finds:

547

(1) That the total amount of the demand of A. V. Ammann, as Conservator of The Long Beach Federal Savings and Loan Association, and of The Long Beach Federal Savings and Loan Association, for the payment in full of principal, interest and costs of the one hundred and seventy-four (174) trust deed loans of the Intervener, hereinafter enumerated, is the sum of $774,927.90 up to and including the 30th day of June, 1946, and the additional amount due for each day thereafter up to and including the date of payment is the sum of $95,217.

(2) That the said 174 notes and deeds of trust have been deposited with the Clerk of this Court,

(3) That the defendant Title Service Company, a corporation, is the named trustee in said deeds of trust.

(4) That two sets of requests for reconveyances of said 174 deeds of trust, one set duly executed by A. V. Ammann, as Conservator of The Long Beach Federal Savings and Loan Association, and one set duly executed by the said The Long Beach Federal Savings and Loan Association, without having been ordered so to do in these proceedings, directed to and requesting the Title Service Comp v, as trustee, to reconvey said deeds of trust, have been deposited with the Clerk of this Court, and said re-conveyances are to be effective only upon payment of the sums of money in the manner as hereinafter set forth.

(5) That no cause has been shown why any of the following Orders should not be made or performed.

548 (6) That said Orders and the performance thereof are reasonably necessary and are required by the circumstances of the parties and that the payment of the money in the amounts and at the times directed and the doing of any other things directed herein, can be performed by the party ordered to perform the same.

Wherefore, it is hereby Ordered and Decreed as follows, to wit:

That the defendant Title Service Company is hereby directed to forthwith deposit with the Clerk of this Court, 174 duly executed and acknowledged reconveyances, together with a copy of each thereof, reconveying to the persons legally entitled thereto all of its interest and all the right, title and interest of the beneficiary, The Long Beach Federal Savings and Loan Association of Long Beach, California, an association organized and existing under and by virtue of the laws of the United States of America, and also all the right, title and interest of said Conservator, in and to the real property, the said notes and deeds of trust, as hereinafter more fully described.

That said 174 reconveyances shall be held by the Clerk of this Court and the said Clerk is hereby ordered and directed to deliver said 174 original reconveyances to the order of the Intervener, Home Investment Co. of Long Beach, a corporation, upon clearance of the payment by it to the said Clerk of this Court of the sum of $774,927.90 principal, interest and costs up to and including the 30th day of June, 1946, and the additional sum of $95.217 for each day thereafter up to and including the date of payment; that the sum of $7,972.50, representing a one per cent (1%) bonus for advance payment due the Federal Housing Authority, and the sum of $435.00, representing trustee's fees due the Title Service Company, as trustee, included in said principal sum, shall be so designated and segregated by said Clerk upon deposit of said sums in the registry of the Court.

That upon payment of the aforesaid amounts to 549 the Clerk of this Court, the said Clerk shall forthwith deposit said sums of money in the registry of this Court, and said amounts shall remain on deposit

in the registry until the further order of this Court, and the rights heretofore existing of each and every party to this action, except as to the Intervener Home Investment Co. of Long Beach, a corporation, its successors or assigns, be and the same are hereby expressly reserved and preserved without prejudice and shall be enforced against the said sum of deposited money to all intents and purposes as though said reconveyances had not been executed and delivered pursuant to this Order.

That the Clerk of this Court is directed to accept in payment thereof either a cashier's check payable to himself drawn by the Bank of America National Trust and Savings Association or by the Security First-National Bank of Los Angeles, or cash lawful money of the United States, but he is to perform no acts hereunder until said checks have cleared.

That the Clerk of this Court shall take the receipt of the Intervener upon delivery of the 174 reconveyances, and he shall also issue a receipt to the Intervener for all sums of money received by him.

That upon deposit and clearance of the total consideration paid by Intervener the Clerk is directed to cancel said trust deed notes and trust deeds by marking thereon, "Cancelled pursuant to Order of Court dated July , 1946," and he shall retain said cancelled trust deed notes and trust deeds in the registry of this Court; and that upon payment of the said sums of money and the delivery of the 174 original reconveyances, the Clerk shall also retain the copies of said reconveyances, together with two sets of requests for reconveyances, in the registry of this Court.

That this Court reserves jurisdiction of this matter so as to enable it to make such other and further orders in the premises to carry out the terms, conditions
550 and provisions of this Order, and for the allowance of attorneys fees and costs, if any, and otherwise.

That the real property, trust deed notes and deeds of trust affected by this Order, and hereinabove referred to, are described as follows:

One Hundred and Seventy-four (174) trust deed notes, dated December 15th, 1943, excepting one which is dated October 24th, 1944, pertaining to Lot 68, all executed by

Home Investment Co. of Long Beach, a California corporation, secured by deeds of trust of even dates, executed by Home Investment Co. of Long Beach, a California corporation, as Trustor, to Title Service Company, a California corporation, as Trustee, in favor of and made payable to The Long Beach Federal Savings and Loan Association, a Federal corporation, as Beneficiary, all of which were recorded December 20th, 1943, in the official records of Los Angeles County in the office of the County Recorder of Los Angeles County, California, excepting the one pertaining to Lot 68 which was recorded December 1, 1944.

That the following is the face amount of each note, the legal description of the property covered by the deed of trust securing the note, together with the book and page in which the Deed of Trust securing said note is recorded; That all of said real properties are located in Tract No. 12529, in the County of Los Angeles, State of California, as per map recorded in Book 256, pages 18, 19 and 20 of Maps, in the office of the County Recorder of Los Angeles County, State of California.

Lot No.	Note Face Amount	Recorded	
		Book	Page
1	$4,650.00	20509	251
2	4,650.00	20550	33
3	4,900.00	20550	35
4	4,600.00	20550	25
5	4,850.00	20463	209
6	4,150.00	20468	211
7	4,700.00	20468	213
10	4,600.00	20544	49
11	4,900.00	20541	53
12	4,650.00	20541	55
13	4,650.00	20541	57
15	4,850.00	20518	215
16	4,150.00	20518	213
17	4,800.00	20482	349
18	4,600.00	20482	351
24	4,650.00	20435	327
25	4,650.00	20435	325
27	4,800.00	20461	343
28	4,150.00	20461	345
29	4,700.00	20461	347
30	4,600.00	20500	273
31	4,650.00	20500	271
33	4,600.00	20530	153
34	4,150.00	20530	155
35	4,700.00	20530	157
36	4,600.00	20470	393
39	4,800.00	20508	267
41	4,600.00	20508	263
42	4,650.00	20546	59
43	4,900.00	20546	55
44	4,600.00	20546	53
45	4,650.00	20478	397
47	4,200.00	20478	391
48	4,650.00	20443	237
49	4,700.00	20495	303

Lot No.	Note Face Amount	Recorded Book	Recorded Page
51	4,600.00	20495	301
52	4,150.00	20517	235
53	4,700.00	20517	233
54	4,850.00	20517	237
55	4,700.00	20483	357
56	4,600.00	20483	359
57	4,650.00	20483	361
59	4,200.00	20480	387
60	4,600.00	20480	385
61	4,900.00	20466	237
62	4,800.00	20540	81
63	4,600.00	20540	83
64	4,[illegible]0.00	20540	85
65	4,700.00	20493	283
66	4,850.00	20493	282
67	4,600.00	20493	281
68	3,000.00	21487	161
69	4,650.00	20479	385
70	4,600.00	20479	389
71	4,150.00	20531	75
72	4,850.00	20492	249
73	4,650.00	20492	257
74	4,850.00	20490	205
75	4,900.00	20492	259
76	4,200.00	20537	129
77	4,650.00	20537	131
78	4,850.00	20532	151
80	4,650.00	20532	153
81	4,650.00	20532	147
82	4,200.00	20514	143
83	4,700.00	20547	33
84	4,650.00	20547	31
87	2,150.00	20559	9
88	4,650.00	20487	399
89	4,650.00	20533	79
90	4,900.00	20533	81
91	4,650.00	20533	85
96	4,850.00	20529	141
97	4,650.00	20529	139
98	4,650.00	20555	5
100	4,650.30	20555	9
101	4,200.00	20491	249
103	4,650.00	20491	245
104	4,650.00	20535	131
106	4,150.00	20535	135
107	4,850.00	20549	49
109	4,650.00	20549	41
110	4,850.00	20525	179
112	4,650.00	20525	175
113	4,900.00	20481	327
114	4,200.00	20481	329
115	4,650.00	20481	331
117	4,700.00	20507	275
118	4,200.00	20507	281
119	4,850.00	20503	219
120	4,650.00	20503	217
121	4,650.00	20503	215
122	4,650.00	20496	335
124	4,650.00	20496	327
125	4,200.00	20502	237
126	4,700.00	20502	235
129	4,650.00	20311	193
130	4,850.00	20311	191
132	4,650.00	20512	251
133	4,650.00	20512	245
134	4,900.00	20505	275
135	4,650.00	20505	277
136	4,650.00	20505	279
138	4,200.00	20527	139
139	4,650.00	20527	135
140	4,650.00	20510	87
141	4,900.00	20510	89
143	4,150.00	20539	85
144	4,650.00	20539	87
145	4,850.00	20539	81
146	4,900.00	20366	385
147	4,650.00	20366	383
148	4,650.00	20366	381

Lot No.	Note Face Amount	Recorded Book	Recorded Page
149	4,900.00	20554	7
150	4,200.00	20554	11
151	4,650.00	20530	159
152	4,900.00	20470	395
153	4,850.00	20508	273
154	4,650.00	20546	51
155	4,200.00	20478	395
156	4,700.00	20495	309
157	4,850.00	20517	239
158	4,650.00	20483	363
159	4,900.00	20480	383
160	4,650.00	20540	87
161	4,650.00	20549	39
162	4,150.00	20525	181
163	4,650.00	20507	277
164	4,850.00	20503	221
165	4,900.00	20496	319
166	4,200.00	20502	241
167	4,650.00	20311	197
168	4,850.00	20512	247
169	4,900.00	20505	281
170	4,200.00	20527	141
171	4,700.00	20539	83
173	4,200.00	20366	387
174	4,650.00	20554	13
175	4,900.00	20493	287
176	4,150.00	20552	29
177	4,650.00	20536	183
178	4,900.00	20523	211
179	4,150.00	20488	301
180	4,900.00	20489	293
181	4,200.00	20504	265
182	4,650.00	20516	211
183	4,900.00	20513	277
184	4,150.00	20526	117
185	4,850.00	20514	145
187	4,700.00	20548	37
188	4,650.00	20545	59
189	4,650.00	20545	63
190	4,200.00	20543	75
192	4,650.00	20543	77
193	4,650.00	20520	167
195	4,650.00	20520	165
196	4,700.00	20520	163
197	4,200.00	20521	201
198	4,850.00	20521	199
199	4,150.00	20521	197
200	4,650.00	20447	397
201	4,200.00	20447	395
202	4,700.00	20447	393
203	4,850.00	20506	287
206	4,650.00	20527	161
280	4,700.00	20527	163
281	4,200.00	20527	159
282	4,700.00	20551	37
284	4,200.00	20551	33
285	4,650.00	20500	267
286	4,900.00	20485	393
287	4,650.00	20485	391
288	4,200.00	20526	121
289	4,650.00	20509	257
291			

Dated this 12 day of July, 1946.

PEIRSON M. HALL,
Judge.

557 The Order directing executions of 174 trust deed reconveyances, directing manner of payment and defining rights of parties, a copy of which was served on

the undersigned on July 11, 1946, is hereby approved as to form:

WESTOVER & SMITH,
By STEADMAN G. SMITH,
Attorneys for Plaintiffs M. B.
THOMAS & WALLACE,
By H. O. WALLACE,
Attorneys for Title Service Company, a corporation.
RAYMOND TREMAINE,
Attorney for Robert H. Wallis.
CHARLES K. CHAPMAN,
Charles K. Chapman,
Attorney for The Long Beach Federal Savings & Loan Association.
JAMES M. CARTER,
United States Attorney.
By RONALD WALKER,
Asst. U. S. Atty.; Attorney for A. V. Ammann, individually and as Conservator of The Long Beach Federal Savings & Loan Association.
F. HENRY NECASEK,
F. Henry NeCasek
Attorney for Home Investment Co. of Long Beach, Intervener.

559 Receipt is acknowledged of a copy of the foregoing order (unsigned)

WESTOVER & SMITH,
By STEADMAN G. SMITH,
Attorneys for Plaintiffs.
July 11, 1946.

THOMAS & WALLACE,
By H. O. WALLACE,
Attorneys for Title Service Co., a corporation.
July 11, 1946.

RAYMOND TREMAINE,
By RAYMOND TREMAINE by E.J.J.
Attorney for Robert H. Wallis.
July 11, 1946.

CHARLES K. CHAPMAN,
By CHARLES K. CHAPMAN H. S.
Attorney for The Long Beach Federal Savings & Loan Association.
July 11, 1946, 2:40 P. M.

JAMES M. CARTER,
United States Attorney.
By RONALD WALKER,
Asst. U. S. Atty.; Attorney for A. V. Ammann, individually and as Conservator of The Long Beach Federal Savings & Loan Association.
July 11, 1946, 4:45 P. M.

566 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order extending time to answer or otherwise plead to the cross-claims of defendants Long Beach Federal Savings & Loan Association, Title Service Company and Robert H. Wallis

Filed Aug. 9, 1946

Certain phases of the above entitled matter having been submitted after argument to a three judge court for decision as to the constitutionality of the Home Owners' Loan Act of 1933, as amended, and it appearing that the time to answer or otherwise plead to the cross claims of the defendants Long Beach Federal Savings and Loan Association, Title Service Company and Robert H. Wallis should be extended until after the decision of said three judge court.

It is hereby ordered that the time within which any defendant may be required to answer or otherwise plead to the said cross claims be and it hereby is extended to and including the date ten days subsequent to the date of filing of the decision of the said three judge court in the office of the Clerk of this Court.

Dated: August 9, 1946.

DAVE W. LING,
United States District Judge.

567 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Notice of motion for permission to file supplemental cross-claim in interpleader

Filed Aug. 9, 1946

To John H. Fahey, individually and as Federal Home Loan Bank Commissioner; Paul Mallonee, C. H. Newhouse and Winnie Bucklin and Westover and Smith, your attorneys; A. V. Ammann, individually and as the purported Conservator for the Long Beach Federal Savings and Loan Association and James Carter, United States Attorney, Ronald Walker and Mildred Kluckhohn, Assistant United States Attorney, your attorneys; Long Beach Federal Savings and Loan Association and Charles K. Chapman, your attorney; Robert H. Wallis and Raymond Tremaine, your attorney:

You, and each of you, will please take notice, and you are hereby notified, that on Monday, the 9th day of September, 1946, at 10:00 o'clock A.M., or as soon thereafter as counsel may be heard, in the Court Room of the
568 Honorable Peirson M. Hall, Judge of the United States District Court, Federal Building, in the City of Los Angeles, County of Los Angeles, State of California, the Defendant and Cross-Claimant Title Service Company will present to this Honorable Court a Motion for Permission to file a Supplemental Cross-Claim in Interpleader.

This motion will be made pursuant to the provisions of Rule 15 (d) of the Federal Rules of Civil Procedure and will be based upon this Defendant and Cross-Claimant's original Cross-Claim in Interpleader. Affidavits to be filed in support of said motion and the proposed Supplementary Cross-Claim in Interpleader, all of which documents are attached hereto and served herewith, save and except this party's original Cross-Claim in Inter-

pleader to which reference is hereby made in the original files of this action.

Dated at Long Beach, California, this—day of August, 1946.

THOMAS AND WALLACE,
By H. O. WALLACE,
Attorneys for Defendant and Cross-Claimant Title Service Company.

569 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion for permission to file supplemental cross-claim in interpleader

Filed Aug. 9, 1946

Comes now the Defendant and Cross-Complainant in Interpleader Title Service Company and moves this Honorable Court for permission to file a Supplemental Cross-Claim in Interpleader, in order to bring before the Court the matters set forth in its proposed Supplemental Cross-Claim in Interpleader, a copy of which is attached hereto and to which reference is hereby made for greater particularity, and in order to relieve itself of the liability and responsibility for approximately twenty-five (25) trust deeds and promissory notes, together with the purported requests for reconveyances thereof executed by the defendant A. V. Ammann as the purported Conservator for the defendant Long Beach Federal Savings and Loan Association, all of which have been presented to this Defendant subsequent to the filing of its original Cross-Claim in Interpleader herein.

This moving Defendant and Cross-Claimant also asks permission of this Honorable Court to file additional supplemental cross-claims in interpleader, from time to time, in the future, as additional trust deeds, promissory notes and requests for reconveyances may be presented to it, without the necessity of the filing and hearing of further motions for permission so to do, in

570

order to save the time of the Court and of all parties to the action.

This motion is made pursuant to the provisions of Section 15 (d) of the Federal Rules of Civil Procedure and is based upon the original Cross-Claim in Interpleader filed herein by this Defendant and Cross-Claimant, the affidavits of Ethel L. Roberts, Assistant Secretary of the Title Service Company, a corporation and of H. O. Wallace, of counsel for this moving party, and upon all of the files in said action.

Dated at Long Beach, California, this 9 day of August, 1946.

THOMAS AND WALLACE,
By H. O. WALLACE,
Attorneys for Defendant and Cross-Claimant in Interpleader Title Service Company.

571 In the District Court of the United States

[Title omitted.]

Supplemental cross-claim in interpleader

Comes now the Defendant and Cross-Claimant, Title Service Company, leave of Court so to do having heretofore been had and obtained, and for a Supplemental Cause of Action and Cross-Claim in Interpleader Against the Defendant, John H. Fahey and All Other Remaining Named Defendants, alleges:

I

Incorporates herein Paragraphs II, III, IV, VI, IX, X, XI and XII of its original cross-claim in interpleader with the same force and effect as though the same were herein set forth in full.

II

(a) This action arises under the Fifth Amend-
572 ment of the Constitution of the United States of America, in that Plaintiffs have been deprived of property in excess of Twenty-six million Dollars

($26,000,000.00), without due process of law as hereinafter more fully appears.

(b) This action also arises under and involves the interpretation and effect of the following acts of Congress of the United States of America:

1. "Home Owners Loan Act of 1933", as amended—Public No. 43—73rd Congress—48 Statutes 1932 (June 13, 1933—Chapter 64, Paragraph 1, 48 Statutes 1928).

2. "Federal Home Loan Bank Act", as amended—Public No. 304—72nd Congress (July 22, 1932, Chapter 522, Paragraph 1, 47 Statutes 725 and amendments thereto).

3. "The National Housing Act"—Public No. 479 73rd Congress (June 27, 1934, Chapter 847, 48 Statutes 1246 and amendment thereto), and

4. Regulations, rules and directives purportedly made and adopted pursuant to and under each and all of said Acts.

(c) This action involves amounts in controversy in excess exclusive of interest and costs, of the sum of Three Thousand ($3,000.00), Dollars, to-wit: involves amounts in controversy in excess of Twenty-six Million ($26,000,000.00) Dollars.

(d) This action also seeks injunctive relief to prevent the wrongful dissipation of private property in amounts in excess of Twenty-six Million ($26,000,000.00) Dollars, wrongfully taken without due process of law and to restrain the enforcement, operation and execution, in whole or in part, of Acts of Congress, upon the ground that such Acts or parts thereof, are repugnant to the Constitution of the United States; and Amendment
573 V thereof, and therefore pursuant to the provisions of Section 380 (a) Title 28 of the Federal Judicial Code, this defendant respectfully requests the senior Circuit Judge of the Ninth Judicial Circuit to immediately designate three (3) Judges to comprise the Court to hear this action as in said Section 380 (a) provided.

This action also arises under Title 28, Section 41, subdivision 26, subsections a, b, c, d, and e of the Federal Judicial Code. Defendant, Title Service Company, a corporation, is a citizen of the State of California. Defend-

ants, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and/or as Federal Home Loan Bank Commissioner, is a resident of Washington, District of Columbia, and that John H. Fahey, as an individual is a resident of the State of Massachusetts; that A. V. Ammann, as the purported Conservator for the Defendant, Long Beach Federal Savings and Loan Association, is a resident of Washington, District of Columbia, and that A. V. Ammann, as an individual is a resident of the State of Maryland, which are other than the State of California. The amount in controversy in the principal action, exceeds $500.00, and this Defendant is informed and believes said sum amounts to approximately $26,000,000.00. The amount involved in this Defendant's cross-claim exceeds $500.00, to-wit: is approximately the sum of $12,000,000.00.

III

That since the filing of its original cross-claim in interpleader herein, and after the service upon him of the Alias Summons on the Cross-Claim in Interpleader and the service upon him of a copy of said cross-claim in interpleader of the Defendant, Title Service Company, the Defendant, A. V. Ammann, as the purported conservator for the Defendant, Long Beach Federal Savings and Loan Association did, on the 21st day of June, 1946, deliver to the Title Service Company fifteen (15) promissory notes and deeds of trust securing the same, together with requests for full reconveyances
574 thereof executed by himself, which documents are listed with particularity in Exhibit "A" attached hereto and made a part hereof, and did demand that this Defendant make, execute and deliver to the makers of said trust deeds and promissory notes said full reconveyances thereof.

That thereafter, and on the 8th day of July, 1946, the said A. V. Ammann did deliver to the Title Service Company three (3) additional promissory notes and deeds of trust securing the same, together with requests for full reconveyances thereof executed by himself, which documents are listed with particularity in Exhibit "B" attached hereto and made a part hereof, and did demand that this

Defendant make, execute and deliver to the makers of said trust deeds and promissory notes said full reconveyances thereof.

That thereafter, and on the 12th day of July, 1946, the said A. V. Ammann did deliver to the Title Service Company six (6) additional promissory notes and deeds of trust securing the same, together with requests for full reconveyances thereof executed by himself, which documents are listed with particularity in Exhibit "C" attached hereto and made a part hereof, and did demand that this Defendant make, execute and deliver to the makers of said trust deeds and promissory notes said full reconveyances thereof.

That thereafter, and on the 13th day of July, 1946, the said A. V. Ammann did deliver to the Title Service Company, one (1) additional promissory note and deed of trust securing the same, together with a request for a full reconveyance thereof executed by himself, which documents are described with particularity in Exhibit "D" attached hereto and made a part hereof, and did demand that this Defendant make, execute and deliver to the maker of said promissory note and trust deed said full reconveyance thereof.

IV

That by reason of the notice theretofore served upon it by the Defendant Long Beach Federal Savings and Loan Association to the effect that the purported appointment of the said A. V. Ammann is invalid and of no effect and that the said A. V. Ammann is without authority to act for said Long Beach Federal Savings and Loan Association, said association being the named beneficiary in all of the deeds of trust hereinabove described, this Defendant, Title Service Company is faced with conflicting, inconsistent and contrary demands. That the total face value of the hereinabove described promissory notes and deeds of trust securing the same is $61,632.90. That said Long Beach Federal Savings and Loan Association, in writing, has notified Title Service Company not to reconvey said deeds of trust upon the demands of the said A. V. Ammann, and has warned Title Service Company that if such reconveyances are issued said Long Beach Federal Savings and Loan Association

will hold it in damages for the total amount of said deeds of trust and the promissory notes which the same were given to secure. Said Title Service Company is not interested nor concerned with the said conflicting demands, but that it will be imperiled whichever way it attempts to decide such controversy.

V

That Defendant, Title Service Company, herewith deposits with the Registry of this Court said twenty-five (25) promissory notes and trust deeds securing the same hereinabove described, aggregating the sum of $61,632.90 face value, together with requests for reconveyances presented to it by the said A. V. Aminann, purporting to act as Conservator for Long Beach Federal Savings and Loan Association.

VI

That at no time since the 20th day of May, 1946, the date of the purported appointment of the said A. V. Ammann as the alleged Conservator for the Defendant, Long Beach Federal Savings and Loan Association, has any documentary evidence, or any evidence other than hearsay, been given, directed or delivered to the Defendant,
576 Title Service Company, of the authority, if any, of the said A. V. Ammann.

Wherefore, Defendant and Cross-Claimant, Title Service Company, prays judgment as follows:

1. That said Defendants and each and all of them be ordered by this Honorable Court to interplead and litigate with each other and with this Defendant and Cross-Claimant, their various conflicting claims to the said twenty-five (25) trust deeds and promissory notes with the face value of $61,632.90 deposited with the Registry of this Honorable Court herewith.

2. That this Honorable Court adjudge and determine between the parties hereto their respective rights, title and interest in and to the said promissory notes and trust deeds and each and all of the same deposited herewith. That the Court adjudicate the validity of the conflicting claims of the said Defendants Fahey and Ammann and the said Defendant, Long Beach Federal Savings and Loan Association, thus set forth and presented to it.

3. That the cross-claimant, Title Service Company, be instructed and ordered by this Honorable Court, as to its rights and duties as named trustee in each and all of the twenty-five (25) deeds of trust deposited herewith.

4. That cross-claimant, Title Service Company, be released and discharged of and from any and all responsibility and liability as trustee under said twenty-five (25) trust deeds deposited herewith, and any and all of the same, except as directly adjudicated by Decree of this Court.

5. That cross-claimant, Title Service Company, herein recover its costs and expenses and a further reasonable sum for attorneys' fees incurred, and their costs and expenses, and that said sum so allowed, together with beneficiary's costs and expenses be ordered paid by Defendants Fahey and Ammann and/or Long Beach Federal Savings and Loan Association from assets of said Association in possession of said Defendants, or any and all of the same.

577 6. And for such other and further relief as to this Court may seem meet and proper in the premises.

THOMAS AND WALLACE,
By H. O. WALLACE,
Attorneys for Defendant,
Title Service Company.

[*Duly sworn to by Ethel L. Roberts; jurat omitted in printing.*]

578 Enumeration of Promissory Notes and Trust Deeds with Requests for Reconveyances delivered by A. V. Ammann to Title Service Company on June 21st, 1946.

1. Note and trust deed dated May 10, 1941, executed by J. D. Willhoit and Maude Willhoit in favor of Cecil L. Crabb recorded June 30, 1941, Book 18565, Page 121, and assigned by said Cecil L. Crabb to Long Beach Federal Savings and Loan Association by assignment recorded May 19, 1944, Book 20873, Page 124, said note having been assumed by Charles J. Blum and Hazel Blum. Amount $1724.12.

2. Note and trust deed dated February 27, 1945, exe-

cuted by Lorne Middough and Alice Hunter Middough, in favor of Long Beach Federal Savings and Loan Association, recorded May 29, 1945, Book 21977, Page 275. Amount $4200.00.

3. Note and trust deed dated May 7, 1945, executed by William H. Creath and Mary F. Creath in favor of Long Beach Federal Savings and Loan Association, recorded May 28, 1945, in Book 21973, Page 373, said note having been assumed by Everett W. Shoemaker and Helen M. Shoemaker and further assumed by Jack Allen and Mildred Allen. Amount $2100.00.

4. Note and trust deed dated June 3, 1942, executed by Francis C. DeKay and LaRue DeKay in favor of Long Beach Federal Savings and Loan Association, recorded June 18, 1942, in Book 19121, Page 391, said note having been assumed by William W. Ely. Amount $675.00.

5. Note and trust deed dated January 29, 1937, executed by Lloyd S. Whaley and LaVere W. Whaley in favor of Long Beach Federal Savings and Loan Association, recorded February 8, 1937, in Book 14782,
579 Page 24. Amount $2700.00.

6. Note and trust deed dated October 15, 1941, executed by Benj. Standifird and Josie Standifird in favor of Long Beach Federal Savings and Loan Association, recorded November 14, 1941, in Book 18859, Page 323. Amount $2250.00.

7. Note and trust deed dated June 22, 1940, executed by Oscar R. Thomas and Helen U. Thomas in favor of Long Beach Federal Savings and Loan Association, recorded June 29, 1940, in Book 17634, Page 173, said note having been assumed by Merle S. Ross and Mary E. Ross. Amount $2000.00.

8. Note and trust deed dated June 4, 1940, executed by Richard A. Long and Ethel Long in favor of Long Beach Federal Savings and Loan Association, recorded June 19, 1940, in Book 17560, Page 343. Amount $2250.00.

9. Note and trust deed dated March 22, 1939, executed by Jesse Corwin and Pearl Corwin in favor of Long Beach Federal Savings and Loan Association, recorded March 31, 1939 in Book 16419, Page 317. Amount $3000.00.

10. Note and trust deed dated February 16, 1940, executed by James H. Waddill and Euphia J. Waddill, in favor of Long Beach Federal Savings and Loan Association, recorded March 2, 1940 in Book 17340, Page 53. Amount $1600.00.

11. Note and trust deed dated April 3, 1940, executed by Oliver K. Harden and Carrie Harden in favor of Long Beach Federal Savings and Loan Association, recorded April 5, 1940, in Book 17387, Page 229, said note having been assumed by La Mar C. Nielson and Ellen Elizabeth Nielson. Amount $1800.00.

12. Note and trust deed dated December 16, 1938, executed by William B. Dyer and Elsie E. Dyer in favor of Long Beach Federal Savings and Loan Association, recorded December 22, 1938 in Book 16253, Page 283, said note having been assumed by George Turbush and Nellie N. Turbush. Amount $2250.00.

13. Note and trust deed dated August 2, 1938, executed by Raymond Benefiel and Ruth Benefiel in favor of Long Beach Federal Savings and Loan Association, recorded on Certificate No. KZ96905, Volume KZ, at Page 96905 of Register of Titles, as Document No. 11409-G. Amount $750.00.

14. Note and trust deed dated June 13, 1938, executed by Vernon T. Quinn and Myrtle Quinn in favor of Long Beach Federal Savings and Loan Association, recorded June 23, 1938 in Book 15826, Page 309. Amount $1000.00.

15. Note and trust deed dated December 21, 1937, executed by Robert C. Tullos and Helen M. Tullos in favor of Long Beach Federal Savings and Loan Association, recorded January 26, 1938, in Book 15545, Page 193 of Official Records. Amount $1832.78.

581. Enumeration of Promissory Notes and Trust Deeds with Requests for Reconveyances delivered by A. Va Ammann to Title Service Company on July 8, 1946.

1. Note and trust deed dated February 23, 1937, executed by Chester D. Bell and Marion A. Bell in favor of Long Beach Federal Savings and Loan Association, recorded March 3, 1937, in Book 14740, Page 335. Amount $1500.00.

2. Note and trust deed dated March 20, 1939, executed

by Harry S. Sumners and Myrtle M. Sumners, in favor of Long Beach Federal Savings and Loan Association, recorded April 5, 1939, in Book 16467, Page 345. Amount $2200.00.

3. Note and trust deed dated November 6, 1945, executed by William D. and Elma A. Caravan, in favor of Long Beach Federal Savings and Loan Association, recorded November 26, 1945, in Book 22446, Page 341. Amount $2300.00.

582 Enumeration of Promissory Notes and Trust Deeds with Requests for Reconveyances delivered by A. V. Ammann to Title Service Company on July 12, 1946.

1. Note and trust deed dated February 18, 1944, executed by Wrigley Heights Second, Inc., Glenn A. Doughty, President and Rosemary Weber, Secretary, in favor of Long Beach Federal Savings and Loan Association, recorded February 28, 1944 in Book 20688, Page 235. Amount $4600.00.

2. Note and trust deed dated February 1, 1940, executed by Fred T. Rose and Clara J. Rose in favor of Long Beach Federal Savings and Loan Association, recorded February 2, 1940, in Book 17263, Page 99, said note having been assumed by Hollis S. Chaulsett and further assumed by Harold Jenkins and Elizabeth Jenkins. Amount $1800.00

3. Note and trust deed dated September 21, 1943, executed by Ruth Pritchard de Rivera in favor of Long Beach Federal Savings and Loan Association, recorded December 23, 1943, in Book 20506, Page 327 of Official Records, said note having been assumed by Paula Lerner and Irving Lerner. Amount $3300.00.

4. Note and trust deed dated December 13, 1939, executed by William E. and Zola M. Bailey in favor of Long Beach Federal Savings and Loan Association, recorded December 14, 1939, in Book 17038, Page 221, said note having been assumed by Mrs. W. F. Goodfellow and W. F. Goodfellow. Amount $1800.00.

5. Note and trust deed dated August 6, 1936, executed by C. Douglas and Luella S. Barnes in favor of Long Beach Federal Savings and Loan Association, recorded August 14, 1936, in Book 14304, Page 281. Amount $5000.00.

583 6. Note and trust deed dated March 27, 1943, executed by J. M. Lenney Bldg. Co., John Merritt Lenney and John William Lenney, in favor of Long Beach Federal Savings and Loan Association, recorded April 1, 1943, in Book 19907, Page 245, said note having been assumed by Thomas M. Middleton and Elizabeth C. Middleton. Amount $4400.00.

584 Enumeration of Promissory Note and Trust Deed with Request for Reconveyance delivered by A. V. Ammann to Title Service Company on July 13, 1946.

1. Note and trust deed dated September 8, 1943, executed by Helen H. and Paul L. Norris in favor of Long Beach Federal Savings and Loan Association, recorded October 18, 1943, in Book 20324, Page 349. Amount $3500.00.

585 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of H. O. Wallace in support of motion for permission to file supplemental cross-claim in interpleader
Filed Aug. 9, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

H. O. Wallace, being first duly sworn, deposes and says:

That he is a member of the firm of Thomas and Wallace, the attorneys of record for the Defendant and Cross-Claimant in Interpleader, Title Service Company, in the above entitled and numbered matter. That he has had the exclusive charge and handling of said litigation for his firm and that he is more fully familiar with the matters set forth herein than any other person.

That since the 3rd day of June, 1946, he has received an average of not less than six telephone calls or
586 personal calls from persons, firms, corporations or escrow officers regarding the obtaining of reconveyances of titles to real property affected by deeds of trust wherein the Long Beach Federal Savings and Loan Association is the beneficiary, the Title Service Company

is the trustee and the person making such calls was the maker or the agent of the maker. That in each case he has attempted to explain to the caller the reason why reconveyances could not be given by the Title Service Company and that the matter of authority to issue such reconveyances is now pending before this Honorable Court for consideration.

That in company of counsel for the Plaintiffs in said action, counsel for the Long Beach Federal Savings and Loan Association and with counsel for the Defendants, Ammann and Fahey, your affiant has tried to reach a basis for stipulation under the terms of which such reconveyances could be issued; but that counsel for the Defendants Ammann and Fahey, have consistently declined to enter into any such stipulation.

That affiant has been informed by many of his callers, referred to above, that they have escrows pending for the sale of their respective parcels of real property affected by the deeds of trust hereinabove referred to and that by reason of their inability to obtain reconveyances that such escrows were about to be cancelled, or were, in fact, being cancelled, resulting in financial losses to themselves by reason of matters over which they had no control. That as a result thereof legal actions have been threatened against Title Service Company for damages for failure to reconvey. That many of such callers have stated to affiant that they have paid to the Defendant, A. V. Ammann, as the purported Conservator for Long Beach Federal Savings and Loan Association the full balance due upon their respective promissory notes and have been told that reconveyances of their deeds of trust could be obtained from the Title Service Company.

That many of the callers hereinabove referred to
587 are ex-service personnel who are seeking to obtain loans under the "G-I Bill" and others are seeking to refinance their homes or to purchase homes under the provisions of the California State Veterans' Welfare Act, but that by reason of their inability to obtain reconveyances on outstanding deeds of trust that they are unable so to do.

That one of such callers, a Mrs. Woods, has represented to affiant that she is in great need of surgery and hos-

pitalization and that it is necessary for her to refinance her real property, covered by a deed of trust, and that by reason of her inability to obtain a reconveyance she is unable so to do, and that she is undergoing needless physical suffering as a result thereof.

That so far as affiant has been able to ascertain there are at least 150 persons who are seeking to obtain such reconveyances, part of whom are acting individually and part of whom are acting through various escrow offices and other financial institutions.

That by reason of all of the premises aforesaid affiant verily believes that the Title Service Company may be made the object of varied and numerous actions in law and in equity to require the making, execution and delivery of reconveyances under deeds of trust whereunder it is the trustee and the Long Beach Federal Savings and Loan Association is the beneficiary, and for damages for failing to so reconvey, unless the protection of this Honorable Court, in equity, is extended to said Title Service Company and it is allowed to interplead such promissory notes and deeds of trust. That such actions would be unavailing to the litigants and would cause additional expense and vexation to said Title Service Company.

That the reason advanced by counsel for the Defendants, Fahey and Ammann for declining to enter into any stipulation for the payment into the Registry of this Court of the money due under the promissory notes and deeds of trust hereinabove referred to as the basis for the issuance of reconveyances is that such procedure would establish a precedent and would result in depriving said defendants of sufficient funds wherewith to carry on the business of the Long Beach Federal Savings and Loan Association which they are allegedly conserving. That in truth and in fact the number of notes seeking to be paid off and trust deeds reconveyed are a small proportion, being approximately in the ratio of 150 to 8000.

That the Defendant, A. V. Ammann, in his capacity as the purported Conservator for the Long Beach Federal Savings and Loan Association has heretofore handed to the Title Service Company, twenty-five (25) promissory notes and deeds of trust securing the same, aggre-

gating $61,632.90, with requests for reconveyances thereof, executed by himself. That it is the best judgment and opinion of affiant that said documents should be deposited with the Registry of this Honorable Court, in interpleader, pending the outcome of the pending litigation.

Dated at Long Beach, California, this 8th day of August, 1946.

H. O. WALLACE.

Subscribed and sworn to before me this 8th day of August, 1946.

[SEAL] HAZEL ROBERTS.

Notary Public in and for said County and State.

589 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of Ethel L. Roberts in support of motion for permission to file supplemental cross-claim in interpleader

Filed Aug. 9, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

Ethel L. Roberts, being first duly sworn, deposes and says:

That she is the Assistant Secretary of the Title Service Company, a California corporation, a Defendant and Cross-Claimant in Interpleader in the above entitled and numbered action.

That on the 21st day of June, 1946, the Defendant, A. V. Ammann, as the purported Conservator for the Long Beach Federal Savings and Loan Association, delivered unto Title Service Company, a total of fifteen (15) promissory notes and deeds of trust securing the same, together with requests for reconveyances of
590 said trust deeds executed by himself. That on the 8th day of July, 1946, the said A. V. Ammann delivered unto the Title Service Company an additional three (3) such promissory notes, trust deeds and requests for reconveyances; that on the 12th day of July, 1946, the said A. V. Ammann delivered unto the Title Service

Company an additional six (6) such promissory notes, trust deeds and requests for reconveyances; and that on the 13th day of July, 1946, the said A. V. Ammann delivered to the Title Service Company one (1) additional such promissory note, trust deed and request for reconveyance. That in all of such documents the said Long Beach Federal Savings and Loan Association was either named as the payee of the promissory note, or the assignee of the payee, and as the beneficiary under the deeds of trust securing the same, or as the assignee of such beneficiary. That the Title Service Company was the named trustee in all of said deeds of trust. That the total face value of said promissory notes is $61,632.90.

That on or about the 3rd day of June, 1946, there was delivered to the Title Service Company by the Long Beach Federal Savings and Loan Association, its notice and demand, in writing, wherein and whereby the Title Service Company was notified that the said Long Beach Federal Savings and Loan Association did not recognize the validity of the purported appointment of A. V. Ammann, as the alleged Conservator for said Association, that the validity of such appointment and the constitutionality of the Acts of Congress and the regulations adopted pursuant thereto under which said purported appointment was allegedly made, were being attacked in this Honorable Court and advising and warning Title Service Company not to make any reconveyances upon the request of the said A. V. Ammann and stating that the Title Service Company would be held liable for such damages as might accrue to the said Long Beach Federal Savings and Loan Association should it so reconvey.

591 That the said A. V. Ammann has never delivered to Title Service Company any evidence of his authority as such purported Conservator and that the only information in that regard had by the Title Service Company is hearsay or self-serving statement made or written by the said A. V. Ammann.

That since the 20th day of May, 1946, the date upon which the Defendant, A. V. Ammann assumed the control of the Long Beach Federal Savings and Loan Association, affiant, or those employees of the Title Service

Company working with her or under her supervision, have received an average of at least ten (10) calls per day from persons, firms or corporation representatives, seeking to obtain reconveyances of trust deeds under which the said Long Beach Federal Savings and Loan Association is the beneficiary. That it is the best estimate of affiant that there are approximately 150 such trust deeds under which the trustors are seeking reconveyances. That, as related to affiant by many of such callers, great hardship is being worked on many such persons and they have been caused financial loss by reason of the inability of Title Service Company to issue the requested reconveyances. That many such persons have been recently discharged from the armed services of the United States and are trying to take advantage of either the "G-I Bill" of the California Veterans' Welfare Act in the purchase or refinancing of homes, but are unable so to do until such time as they can obtain reconveyances of such trust deeds.

That unless the Defendant and Cross-Claimant, Title Service Company is allowed to deposit the hereinabove described promissory notes, deeds of trust and requests for reconveyances, aggregating $61,632.90 in face value, it will be submitted to continuing conflicting cross-claim and possible litigation as a result thereof. That it has been represented to affiant by the Long Beach Federal Savings and Loan Association, the named payee under all of said promissory notes, that it has no information or
592 belief as to whether the indebtedness represented by said notes has been paid, and if so to whom the same has been paid, notwithstanding the recitation in the face of the requests for reconveyance executed by the said A. V. Ammann that the indebtedness evidenced by said promissory notes has been paid in full.

Dated at Long Beach, California, this 8th day of August, 1946.

ETHEL L. ROBERTS.

Subscribed and sworn to before me this 8th day of August, 1946.

[SEAL] HAZEL ROBERTS.

Notary Public in and for the County of Los Angeles, State of California.

593 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Proof of service of notice of motion, motion, and affidavits in support of motion for permission to file supplemental cross-claim in interpleader

Filed Aug. 9, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

H. O. Wallace, being first duly sworn, deposes and says: That he is a member of the bar of this Honorable Court and that he is one of the attorneys of record for the Defendant and Cross-Claimant Title Service Company.

That on the 9th day of August, 1946, he served the Notice of Motion for Permission to File Supplemental Cross-Claim in Interpleader, Motion for Permission to File Supplemental Cross-Claim in Interpleader with copy of the proposed Supplemental Cross-Claim in Interpleader attached thereto, Affidavit of H. O. Wallace in Support of Motion and Affidavit of Ethel L. Roberts in
594 Support of Motion, upon the parties to the above entitled and numbered action, hereinafter set forth, by placing true and correct copies of said documents in envelopes addressed as follows: John H. Fahey, John H. Fahey, Federal Home Loan Bank Commissioner, 101 Indiana Avenue, Washington, D. C., upon A. V. Ammann, an individual and as Conservator for the Long Beach Federal Savings and Loan Association, as follows: James Carter, U. S. Attorney, Ronald Walker, Asst. U. S. Attorney, Mildred Kluckhohn, Asst. U. S. Attorney, Federal Building, Los Angeles, California; upon Long Beach Federal Savings and Loan Association, as follows: Charles C. Chapman, Esq., Ocean Center Building, Long Beach, California; upon Paul Mahonee, C. H. Newhouse, Winnie Bucklin, as follows: Westover and Smith, Esqs., 1007-1015 Pacific Southwest Bldg., 215 West Sixth Street, Los Angeles, California; upon Robert H. Wallis, as follows: Raymond Tremaine, Esq., 1007 Van Nuys Bldg., 207 West Seventh Street, Los Angeles, California; and

then by sealing the same and depositing them in the United States Post Office at Long Beach, California, with postage thereon fully prepaid. That there is regu-
595 lar delivery of United States mail between the place of mailing and the places to which said envelopes were addressed.

Dated at Long Beach, California, this 9th day of August, 1946.

H. O. WALLACE.

Subscribed and sworn to before me this 9th day of August, 1946.

[SEAL] HAZEL ROBERTS.
Notary Public in and for said County and State.

596 In the United States District Court

[Title omitted.]

[File endorsement omitted.]

Cross-claim to enforce legal and equitable claims to, to obtain possession of, and to remove liens from and clouds upon title to, property and for other and general relief

Filed Aug. 26, 1946

597 Federal Home Loan Bank of Los Angeles, a body corporate, sued herein as a third party defendant, as and for its cross-claim against cross-defendants above named and each of them, alleges:

1. This cross-claim is brought against the co-parties hereinabove named and arises out of the occur-ence that is the subject matter of the third party complaint of third party plaintiff Long Beach Federal Savings and Loan Association herein, to wit, the purported seizure of cross-claimant and its assets and its purported merger with cross-defendant Federal Home Loan Bank of Portland on or about March 29, 1946, all as is set forth in Paragraph III of the third party complaint herein and as is hereinafter set forth in detail.

2. Jurisdiction of the action arises as is set forth in the original complaint herein and in the third party complaint aforesaid; and in addition thereto jurisdiction of this cross-claim arises under the Fifth Amendment to the Constitution of the United States, under Section 57 of the

Judicial Code (28 U.S.C., Section 118) and under Sections 3, 12, 17, 25 and 26 of the Federal Home Loan Bank Act (July 22, 1932; 47 Stat. 725 et seq., 12 U.S.C. Sections 1421-1499) and under the facts alleged in Paragraph 1 hereof; and this cross-claim is brought to enforce
598 legal and equitable claims to, to obtain possession of, and to remove clouds upon the title to, the hereinafter described assets and properties owned or held by cross-claimant Federal Home Loan Bank of Los Angeles as of March 29, 1946, and which are now situated within the Southern or Northern Districts of California. The matter in controversy exceeds, exclusive of interest and costs, the sum of $45,000,000.00.

3. Cross-claimant Federal Home Loan Bank of Los Angeles (sometimes hereinafter referred to as "Los Angeles Bank") is and at all times herein mentioned was a body corporate, a Federal Home Loan Bank duly established by the Federal Home Loan Bank Board under the authority and within the meaning of Chapter 11 of Title 12 of the United States Code.

4. Cross-defendant Federal Home Loan Bank of Portland (hereinafter referred to as "Portland Bank") is and at all times herein mentioned was a body corporate, a Federal Home Loan Bank duly established by the Federal Home Loan Bank Board at Portland, Oregon, under the authority and within the meaning of Chapter 11 of Title 12 of the United States Code. Said Portland Bank on and since March 29, 1946, has been and is sometimes known and referred to as "Federal Home Loan Bank of San Francisco." Said Portland Bank has since said date of March 29, 1946, been purportedly engaged in business within the Southern District of California and is now found within said district in the course of its activities in such regard.

5. John H. Fahey is sued herein both individually and as Chairman of the Federal Home Loan Bank Board
599 purportedly serving as Federal Home Loan Bank Commissioner. He is hereinafter referred to in each and both of said capacities as "Commissioner." He is and at all times mentioned herein was the Chairman of the Federal Home Loan Bank Board and since on or about February 24, 1942, has purportedly been serving as Fed-

eral Home Loan Bank Commissioner under the asserted authority of Title I of the First War Powers Act, December 18, 1941, 55 Stat. 838, 50 U.S.C. 601-605 and of Presidential Executive Order No. 9070 (February 24, 1942, 7 F.R. 1529). Commissioner is, as cross-claimant is informed and believes and hence alleges, a resident of a district other than and is not found within the Southern District of California. He is joined herein as an absent defendant, to wit, as a defendant to this cross-claim, within the meaning of Section 57 of the Judicial Code.

6. Los Angeles Bank is and at all times herein mentioned was the owner or, in the alternative, the lawful holder, either as pledgee, depositary, custodian, trustee or other bailee of its stockholders and members, and in any event entitled to the possession as against cross-defendants and each of them of all those certain assets and properties described as follows:

Its Corporate Franchise

Cash on hand and in bank (solvent credits) Value—$1,019,279.54.

Government securities owned or held as collateral, including owner's and bailor's interest in securities deposited with others for safekeeping Value—$22,860,958.56.

Advances to members (accounts receivable) Value—$21,624,186.47.

600 Accrued interest receivable Value $33,065.20.

Miscellaneous:

Leasehold interest (office), furniture and equipment, etc., all as shown on Exhibit A hereunto attached.

7. Said assets and properties and the whole thereof are within either the Southern or the Northern District of California. Cross-defendants and each of them and particularly the Portland Bank have full knowledge as to the whereabouts of said property. Cross-claimant herein is without knowledge with reference thereto since, as is hereinafter more particularly alleged, Los Angeles Bank was on March 29, 1946, ousted of possession of the aforesaid assets and properties by cross-defendants and each of them, which said ouster was wholly without right on the part of said cross-defendants or of either of them.

8. On March 29, 1946, Commissioner, without any prior notice, investigation, hearing, opportunity to be heard

or warning whatever, arbitrarily and unlawfully seized the Los Angeles Bank and the whole of its assets and properties, being the assets and properties hereinabove described, ousted and turned out its officers and directors and purported to do each and all of the various other acts and things specified in his purported orders Nos. 5082, 5083 and 5084, which said purported orders were and are in words and figures as follows:

601 Federal Home Loan Bank Administration
Order No. 5082. Date March 29, 1946.

Whereas it has been and is hereby determined that the efficient and economical accomplishment of the purposes of the Federal Home Loan Bank Act, as amended, will be aided by the action contemplated herein; now, therefore,

It is hereby ordered that effective March 29, 1946, the Federal Home Loan Bank of Los Angeles shall be liquidated and reorganized and all assets and property of any kind or nature of such bank, including any unexpended amounts in approved and outstanding budgets and personnel but excluding officers and directors, are hereby transferred to the Federal Home Loan Bank of Portland and all the liabilities and obligations of such Federal Home Loan Bank of Los Angeles are to be assumed by the Federal Home Loan Bank of Portland and are hereby declared to be and become the liabilities and obligations of the Federal Home Loan Bank of Portland. The President of the Federal Home Loan Bank of Portland (hereinafter called Federal Home Loan Bank of San Francisco) is hereby authorized and directed to execute, issue or sign in the name of the Federal Home Loan Bank of Los Angeles or in the name of the Federal Home Loan Bank of San Francisco as the successor and legal assignee of the assets, property, liabilities and obligations of the Federal Home Loan Bank of Los Angeles such instrument or instruments as may be necessary or advisable and to cancel, assign, or otherwise dispose of in whole or in part, any lease under which the Federal Home Loan Bank of Los Angeles
602 has been bound or committed. All members of the Federal Home Loan Bank of Los Angeles are

to become members of the Federal Home Loan Bank of Portland and the Federal Home Loan Bank of Portland (hereinafter called Federal Home Loan Bank of San Francisco) is ordered and directed to issue appropriate evidences of the ownership of all of the stock formerly held by the Federal Home Loan Bank of Los Angeles including stock purchased and held on behalf of the U. S. Government. The charter of said Federal Home Loan Bank of Los Angeles is hereby cancelled.

It is further ordered and directed that effective March 29, 1946, the said Federal Home Loan Bank of Portland shall move and is hereby moved to the city of San Francisco, California, and shall be known hereafter as the Federal Home Loan Bank of San Francisco. Subject to the Federal Home Loan Bank Act, as amended, and the charter and by-laws of the Federal Home Loan Bank of San Francisco, including right of dismissal, said bank shall have as its directors, officers, employees, attorneys, and agents the directors, officers, employees, attorneys, and agents transferred, elected, designated, or appointed, to, by or for the Federal Home Loan Bank of Portland for the calendar year 1946 and shall operate under the charter and by-laws used by the Federal Home Loan Bank of Portland until duly changed.

It is further ordered and directed that effective March 29, 1946, and until changed by the Board of Directors of the Federal Home Loan Bank of San Francisco and approved by the Federal Home Loan Bank Administration, the said Federal Home Loan Bank of San
603 Francisco shall maintain a branch of said bank in the cities of Portland, Oregon, and Los Angeles, California.

It is further ordered and directed that in order to provide for adequate representation of the states in the Federal Home Loan Bank of San Francisco region, effective August 1, 1946, the terms of all directors of said bank shall expire and that prior to July 1, 1946, a new election of director shall be held. The terms of all officers of said bank shall expire upon the designation by the Board of Directors after August 1, 1946, of new officers and their approval by the Federal Home Loan Bank Administration. In such election and in future

elections of the Federal Home Loan Bank of San Francisco the states of Nevada and Arizona shall constitute one state with the right of minimum representation to be alternated between each of said states within the rules and regulations and orders of the Federal Home Loan Bank System providing for a minimum representation from each state in a Federal Home Loan Bank district. On or before July 1, 1946, the Federal Home Loan Bank Administration shall appoint or reappoint four public-interest directors whose terms shall begin August 1, 1946, but shall end respectively December 31, 1946; December 31, 1947; December 31, 1948; and December 31, 1949.

It is further ordered and directed that the Federal Home Loan Bank of San Francisco shall take such other action subject to the approval of the Federal Home Loan Bank Administration as may be necessary or desirable for the effective operation of the Federal Home Loan Bank of San Francisco.

* * * * *

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on March 29, 1946.

[SEAL] (S.) A. V. AMMANN,
Assistant Secretary.

Federal Home Loan Bank Administration
Order No. 5083. Date March 29, 1946.

Pursuant to Section 3 of the Federal Home Loan Bank Act, as amended, and the powers vested in me by law, the district of the Federal Home Loan Bank of Portland is readjusted and shall have added thereto the states of Arizona, California and Nevada, and the Territory of Hawaii.

The said Federal Home Loan Bank of Portland is moved to San Francisco and shall be known as the Federal Home Loan Bank of San Francisco.

* * * * *

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on March 29, 1946.

[SEAL] (S.) A. V. AMMANN,
Assistant Secretary.

Federal Home Loan Bank Administration
Order No. 5084. Date March 29, 1946.

Pursuant to Section 25 of the Federal Home Loan Bank Act, as amended, and the powers vested in me by
605 law the Federal Home Loan Bank of Los Angeles is dissolved.

* * * * * *

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on March 29, 1946.

[SEAL] (S.) A. V. AMMANN,
Assistant Secretary.

9. Thereafter, and pursuant to the terms of said purported orders, each and all of the assets and properties then owned or held by the Los Angeles Bank (other than its corporate franchise, purportedly abolished by purported Order No. 5084) were by Commissioner delivered over to Portland Bank and Portland Bank is now and ever since has been in possession of said assets and properties.

10. Said Orders Nos. 5082, 5083 and 5084 were, on or about the date which they bear, published in the Federal Register and cross-defendants herein and each of them assert and claim that they and each of them were and are valid and proper exercises of administrative authority reposed in Commissioner by law. In truth and in fact, however, and as will appear by the facts herein elsewhere alleged, said orders and each of them and as well each and all of the acts and things done by cross-defendants and each of them pursuant thereto were and are wholly illegal, invalid and void, without reasonable justification or excuse and were the result and consummation of a plan and scheme on the part of said Commissioner, aided and abetted by said Portland Bank, whereby, he the said Commissioner, did arbitrarily and capriciously attempt to deprive cross-claimant herein of its
606 property without due or any process of law.

11. Furthermore, and as a result of said orders, Portland Bank and Commissioner and each of them assert and claim that Portland Bank is the owner or otherwise entitled to the possession of each and all of the said assets

and properties other than said corporate franchise by virtue of said purported orders and the delivery of possession of said assets and properties to Portland Bank by Commissioner. Said claims and each of them were and are wholly without right.

12. Cross-claimant therefore alleges that said orders and each of them and as well each and all of the acts and things done or purported to be done by defendants and each of them pursuant thereto operated to and did (a) deprive it of its property without due or any process of law, (b) constitute a trespass and a fraud in law upon and an invasion of the constitutional rights of said Los Angeles Bank, and (c) cast a cloud upon the rights, titles and interests of Los Angeles Bank in and to those certain assets and properties of said Bank hereinabove described.

13. At all times herein mentioned down to the action taken by the Commissioner on March 29, 1946, and which is hereinabove set forth, the Los Angeles Bank was being efficiently and economically operated and its affairs were in a healthy and prosperous condition. As of December 31, 1945, it was the second largest in value of assets of the twelve Federal Home Loan Banks in the country; its advances to members were the highest of any of such other banks; the total of advances made by it and repaid during the year 1945 was the highest of any of said banks;
607 and its ratio of total compensation of officers and employees to gross operating income was the lowest of any of said banks. The assets, liabilities and capital of the Los Angeles Bank as of March 29, 1946, were as shown on that certain document hereunto annexed, marked Exhibit A, and made a part hereof.

14. In and by and subsequent to his said purported orders Nos. 5082, 5083 and 5084, Commissioner attempted and purported, wholly without warrant of law or legal authority:

(a) To abolish, without notice or hearing or opportunity to be heard, the Twelfth Federal Home Loan Bank District consisting of the states of California, Arizona and Nevada and the Territory of Hawaii; and to establish a new district which said new district was established arbitrarily and wholly without regard to the convenience or customary course of business of the institutions eligible or likely to

subscribe for stock in the Federal Home Loan Bank established within said district, including each and all of the stockholders and members of Los Angeles Bank;

(b) To preclude and to prevent, without notice or hearing or opportunity to be heard, the states of Nevada and Arizona from having their minimum representation of one director in the Federal Home Loan Bank established within their district all as provided in subparagraph (9) of Paragraph (a) of Section 2.4 of the rules and regulations for the Federal Home Loan Bank system;

(c) To liquidate, dissolve and reorganize the Los Angeles Bank, wholly without notice or hearing or opportunity to be heard and without taking any steps whatever toward paying off or retiring its stock either in
608 whole or in part or at all, and cross-claimant alleges in this connection on its information and belief that Commissioner has no intention of paying off or retiring said stock either in whole or in part or at all;

(d) To remove, in the guise of a seizure of the Los Angeles Bank, each and all of the directors and officers of the Los Angeles Bank wholly without cause (other than the refusal of said directors to accept the arbitrary dictates of Commissioner as to officer-personnel of said bank) and wholly without communicating the asserted cause or any cause of such removal either in writing or forthwith or at all to such directors or officers or any thereof;

(e) To confiscate wholly without notice or opportunity to be heard the stock in the Los Angeles Bank of each and every member and stockholder thereof;

(f) To compel each and all of the members and stockholders of the Los Angeles Bank against their will and without their consent and without any notice whatever or opportunity to be heard, to become members and stockholders of the Portland Bank, the assets of which said Portland Bank as at December 31, 1945 and as at March 29, 1946 comprised less than one-third of those of the Los Angeles Bank.

(g) On information and belief, to coerce and he did coerce the said Portland Bank, its directors and officers, wholly without the opportunity of exercising free choice in the matter, into purportedly acquiring the assets and assuming the liabilities of the Los Angeles Bank.

(h) To reduce the representation of the California members on the Board of Directors of the Federal Home Loan Bank within their district from seven members to one; and in this connection cross-claimant alleges
609 that under the purport of said orders Nos. 5082, 5083 and 5084 said California members do or would comprise in number more than 56% of the total members in the so-called Federal Home Loan Bank of San Francisco and are or would be the purported holders of more than 65% of the total stock of said San Francisco bank held by the purported members thereof.

(i) To attempt to usurp and exercise wholly without the concurrence or knowledge of the or any of the other members of the Federal Home Loan Bank Board, the functions and powers vested by law in such Board.

(j) To establish and to permit the operation and maintenance of a so-called branch of said Portland Bank in the City of Los Angeles, California.

15. The purported finding and determination of Commissioner in his Order No. 5082 that the efficient and economical accomplishment of the purposes of the Federal Home Loan Bank Act, as amended, would be aided by the action contemplated therein was and is wholly untrue, sham and false. In truth and in fact the action taken by Commissioner on March 29, 1946, was but the culmination of a series of acts whereby the Commissioner attempted arbitrarily to dominate the affairs of the Los Angeles Bank wholly without regard for the well-being or the legitimate desires or wishes of said bank or of its directors, members and stockholders; and said action was wholly punitive and disciplinary and not otherwise.

16. The controversy between Commissioner and the Los Angeles Bank had its inception on November 23, 1944, with the death of one M. M. Hurford, former president of
610 said bank. Upon the death of Mr. Hurford, his duties as president devolved upon one C. E. Berry, vice-president. Mr. Berry was and is a man of long experience in Federal Home Loan Bank administration, and of demonstrated ability. At the time of Mr. Hurford's death, said C. E. Berry had been vice-president of the Los Angeles Bank for over seven years. Prior thereto he had been a field representative for the Federal Home

Loan Bank administration for three and one-half years. Before that he had been engaged in the savings and loan business for more than thirteen years.

17. On December 15, 1944, the board of directors of the Los Angeles Bank unanimously elected Mr. Berry president of the bank to succeed Mr. Hurford. Such election was to take effect January 1, 1945. This action was heartily endorsed and approved by the members of the bank and by the savings and loan industry in the 12th District generally.

18. Approval of Commissioner as to Mr. Berry's election as president was sought by the bank on December 26, 1944.

19. On or about December 30, 1944, Commissioner notified the Los Angeles Bank that Berry's election was disapproved because he, Commissioner, had not had sufficient time to study the matter. On January 19, 1945, Berry was again unanimously elected president by the board of directors, and this action was unanimously approved by the members at the annual stockholders meeting on February 16th.

20. On March 12, 1945, Commissioner informally advised one D. G. Davis, then chairman of the board
611 of directors of the Los Angeles Bank, that he was unable to approve Berry's election because the latter, according to Commissioner, did not have the necessary background or experience and was not qualified to assume the responsibility of the office of president. His reasons as so given were specious and unfounded, and his actual reasons for such disapproval were other than as stated to said Davis, as will hereinafter appear.

21. On March 18, 1945, the board of directors appointed a committee of three to confer with the Commissioner in Washington with regard to the matter, and about the same time, and because of its importance to the industry generally, the California Savings and Loan League likewise sent a committee of three to Washington.

22. At the resulting conference in Washington the real reasons for Commissioner's refusal to approve the election were revealed. At first Commissioner stated that he had nothing against Berry except that the latter was not, as Commissioner put it, a "big" enough man for

the job. Commissioner then stated in substance that he would approve no one unless there should be submitted to him a list of candidates from which he could choose the person to be subsequently elected by the directors. He stated that this had become his settled procedure, and that he would regard any departure from it as evidence of bad faith. He further stated that the responsibility for the election of officers rested solely with him irrespective of the opinion or wishes of either the board of directors or of the industry as a whole; that the acts of the board of the Los Angeles Bank were "stupid"; that he was in a better position to know what was good
612 for the industry in the 12th District than were the managing officers of the institutions constituting the membership of the bank, or the Board of Directors of the Bank, and that he and he alone would select the president irrespective of the actions of the board.

23. Despite Commissioner's persistent refusal to approve Mr. Berry as president, Commissioner has nevertheless permitted Berry, as vice-president and acting president of the Los Angeles Bank, and at all times since Mr. Hurford's death, to discharge without objection each and all of the functions and duties of president of the Los Angeles Bank down to March 29, 1946.

24. Commissioner's action on said latter date was precipitated by the fact that in early March of 1946, the controversy between the board of directors of the Los Angeles Bank and the Commissioner, was, by Congressman Cecil R. King of California, referred to the House of Representatives Select Committee to Investigate Acts of Executive Agencies beyond the Scope of their Authority, and by the further fact that the board thereof took steps toward employing counsel to assist in the presentation of the facts to the Committee. Commissioner was advised of this latter fact on or about March 15, 1946.

25. Cross-claimant alleges on its information and belief that between March 15 and March 25, 1946, Commissioner formulated a plan and scheme for punitive action and retaliation upon the Los Angeles Bank and its directors through the means of ordering its "liquidation," "dissolution," and "reorganization" by the means and methods evidenced by his orders Nos. 5082, 5083 and 5084 herein-

above referred to. On said latter date and in
613 order, as he conceived, to obstruct and, so far as he deemed it possible, to forestall, any judicial inquiry into his motives and activities in that regard, he caused to be promulgated and published in the Federal Register that certain bulletin 54, a copy of which is hereunto annexed, marked Exhibit B, and made a part hereof. As will be noted by reference to said exhibit, its general purport is and was to declare all records of the Federal Home Loan Bank Administration and all records in the possession of any person, including the Federal Home Loan Banks, as agents of said Administration, to be privileged and confidential to the end that such persons, if served with a subpoena duces tecum calling for the production of said records, were to "respectfully" decline to produce the same save only where authorized by the Commissioner. By taking such action Commissioner attempted arbitrarily and illegally to place himself above and beyond the law and the jurisdiction of the courts.

26. Four days after the promulgation of said bulletin 54, Commissioner, in pursuance of the plan and scheme aforesaid, seized the Los Angeles Bank and its assets and attempted to oust its officers and directors and to do each and all of the other acts and things purportedly authorized by his purported orders Nos. 5082, 5083 and 5084 above mentioned.

27. Cross-claimant alleges that each and all of the acts and things done or purported to be done under the aforesaid orders and each of them were and are unlawful, void, and in excess of the authority vested in Commissioner by law, and that the same and each of them were and are arbitrary abuses of discretion on his part amounting to fraud in law upon the rights of cross-claimant
614 and which resulted in cross-claimant herein being deprived of its property without due or any process of law, and which has operated to and which has in fact cast false and fictitious liens and clouds upon the titles of cross-claimant to its assets and properties situated within this District and within the Northern District of California, all as is hereinabove more particularly alleged.

Wherefore, cross-claimant respectfully prays:

That said purported orders Nos. 5082, 5083 and 5084

and each of them, and as well, each and all of the acts and things done or purported to be done by cross-defendants or either of them pursuant to said purported orders be declared and adjudged to be null, void and of no effect and that any and all clouds and purported liens thereby created upon the hereinabove described assets or properties of cross-claimant herein be removed;

That the titles and rights to possession of cross-claimant as against cross-defendants and each of them to the assets and properties hereinabove described be confirmed and be declared, adjudged and established to be superior to and be quieted as against any and all claims or rights asserted by cross-defendants or either of them under or by virtue of said purported orders or any of them or under or by virtue of any acts or things done or purported to have been done thereunder or pursuant thereto; and that possession of the said assets and properties be restored to cross-claimant herein; that a writ of possession, or other appropriate process issue from this Court in order that the judgment herein with reference to such restoration of possession may appropriately be enforced; or, in the alternative, that Portland Bank be mandatorily ordered and enjoined to execute, by its officers thereunto duly authorized and within a period of
615 time to be specified in the judgment and decree herein, such deed or deeds, assignment or assignments or other instruments necessary or proper to vest in the Los Angeles Bank title and right to possession to any and all the above assets and properties now in the possession of Portland Bank and to deliver possession of the same pursuant thereto; and in default thereof that this Court appoint a commissioner or other appropriate officer duly authorized in and by said judgment and decree to execute such instrument or instruments in its behalf and that in such event appropriate process issue, as above prayed, in order that the Los Angeles Bank may be let into possession;

That Portland Bank be required to account to the cross-claimant with reference to any and all acts or omissions done or omitted to be done by said Portland Bank with reference to said assets and properties during its possession thereof and that judgment be rendered against it for any balance thereby found to exist in favor of cross-claimant;

That cross-defendants and each of them, their successors and assigns, be forever barred from asserting any claims whatever as against said assets or properties or any thereof and arising out of or by virtue of said purported orders or any of them or arising out of or by virtue of any acts or things done or purported to have been done thereunder or pursuant thereto;

That this Court make its order, in the event cross-defendant Fahey shall not voluntarily appear herein, directing said cross-defendant to appear, plead, answer or move to this cross-claim by a day certain to be designated therein, such order to be personally served, if practicable, upon said cross-defendant wherever found and, if not practicable, that such order be published in such manner as the Court shall direct, not less than
616 once a week for six consecutive weeks; and in case said cross-defendant shall not appear, plead, answer or move to the complaint within the time so limited, or within such further time as the Court in its discretion may allow, that the Court, upon proof of the service or publication of said order and of the performance of the direction contained in the same, entertain jurisdiction and proceed to the hearing and adjudication of this action as against Portland Bank in the same manner as if said cross-defendant Fahey had been served with process within this district; such adjudication, in such event, to affect only the assets and properties which are the subject of this action and as well the validity or invalidity of any legal or equitable liens upon or claims to or incumbrances or liens or clouds upon the title of the same or any thereof;

And that cross-claimant have and receive such other, further or different relief as may be meet and equitable in the premises.

O'MELVENY & MYERS,
PIERCE WORKS,
JOHN WHYTE,
By Pierce Works,
PIERCE WORKS,
Richard Fitzpatrick,
RICHARD FITZPATRICK,
Attorneys for cross-claimant
Federal Home Loan Bank of
Los Angeles.

617 [*Duly sworn to by C. E. Berry; jurat omitted in printing.*]

618 *Exhibit "A"*

FEDERAL HOME LOAN BANK OF LOS ANGELES

Trial Balance—March 29, 1946

Assets		
Cash		$ 1,019,279.54
Government Securities		22,860,958.56
Advances to members		21,624,186.47
Accrued Interest Receivable		33,065.20
Prepaid Expenses		18,976.14
Furniture and Equipment		1.00
Other Assets		855.65
Total Assets		45,557,322.56
Liabilities		
Member Deposits		7,597,127.58
Debentures		20,000,000.00
Accrued Interest Payable		78,207.37
Applicants Deposits		300.00
Other Liabilities		957.12
Capital		
Capital Stock:		
(R. F. C.)	$9,967,900.00	
Members	5,971,500.00	
Surplus:		
Reserve (Section 16)	693,687.24	
Reserve for Contingencies	1,000,000.00	
Undivided Profits	247,643.25	
Total Capital		17,880,730.49
Total Liabilities		43,557,322.56

619 *Exhibit "B"*

FEDERAL HOME LOAN BANK ADMINISTRATION

(Bulletin 54)

Part 7—Supervision

RECORDS AND FILES

Part 7 of the rules and regulations for the Federal Home Loan Bank System is hereby amended, effective as of March 25, 1946, by adding at the end thereof an additional section 7.3, reading as follows:

Sec. 7.3 Records of the Federal Home Loan Bank Administration—(a) In control of the Bank Administration. —All records of the Federal Home Loan Bank Administration are in its custody and control for purposes relat-

ing to the powers, duties and authorities of the Federal Home Loan Bank Administration, under the provisions of the Federal Home Loan Bank Act, as amended, and the Home Owners' Loan Act of 1933, as amended. No officer or employee has any control over such records and no discretion with regard to permitting the use of them for any other purpose. All such officers and employees are hereby prohibited from giving out any official information obtained by any one of them on behalf of the Federal Home Loan Bank Administration, or any of such records, to any private person or to any local officer or to any court, including the production of such records or copies thereof made pursuant to their official duties, whether in answer to a subpoena duces tecum or otherwise. Whenever any such subpoena shall have been served upon any of them, they will appear in court in answer thereto, and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by this part.

620 (b) In control of agents, etc.—All records in the control of any person, including any of the Federal Home Loan Banks, the Federal Savings and Loan Insurance Corporation, or the Home Owners' Loan Corporation, in the capacity as agents of the Federal Home Loan Bank Administration, or in the hands of any officer or employee of the Federal Home Loan Bank Administration, must be considered deemed to be privileged and confidential, and such records are in their custody and control for purposes relating to the powers, duties and authorities of the Federal Home Loan Bank Administration under the provisions of the Federal Home Loan Bank Act, as amended, and the Home Owners' Loan Act of 1933, as amended. They have no control over them and no discretion with regard to permitting the use of them for any purpose. All such agents are hereby prohibited from giving out any official information obtained by any one of them on behalf of the Federal Home Loan Bank Administration, or any of such records to any private person or to any local officer or to any court, including the production of such records or copies thereof made pursuant to their official duties, whether in answer to a subpoena duces tecum or otherwise. Whenever any

such subpoena shall have been served upon any of them, they will appear in court in answer thereto, and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by this part.

(c) Confidential character.—The giving out of any such records or information or documents relative thereto, by any of the persons hereinabove referred to, is held to be contrary to public policy by reason of its privileged and confidential character involving delicate and sensitive matters relating to the condition and affairs of
621 financial institutions, and not to be permitted. In all cases where any such documents or records, or copies thereof, are desired by, or on behalf of, any private party, or parties to a suit, whether in a court of the United States or any other, such information, or copies shall be furnished only upon the written authorization or approval of the Commissioner of the Federal Home Loan Bank Administration, or such person or persons as may be authorized by him to grant such authorization or approval.

(1 Stat. 28, 49, 65, 68, 553; 9 Stat. 395, sec. 8; 16 Stat. 163; 17 Stat. 283, Secs. 8, 17; 47 Stat. 731, 736, sec. 5 (a), (d); 48 Stat. 133, 233, sec. 403 (b); 48 Stat. 1257, sec. 17 (a); 49 Stat. 297, sec. 23; 49 Stat. 298; 5 U.S.C. 22, 12 U.S.C. and Sup., 1428, 1437, 1463 (n); 1464 (a), (d), 1726 (b); E.O. 9070, 7 F.R. 1529.)

This amendment is deemed to be of a procedural character within the meaning of sec. 8.3 of the rules and regulations for the Federal Home Loan Bank System.

Dated: March 25, 1946.

JOHN H. FAHEY,
Federal Home Loan Bank Commissioner.

(F.R. Doc. 46-4948; Filed, Mar. 25, 1946; 3:57 p.m.)

622 STATE OF CALIFORNIA,
County of Los Angeles; ss:

Marjorie McCoy being first duly sworn, on oath says: That affiant is and was at the time of the service herein over the age of eighteen (18) years and not a party to the within proceeding; that she is a citizen of the United States and a resident of the County of Los Angeles, State

of California; that her business address is 900 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California:

That Charles K. Chapman is attorney of record for Long Beach Fed. Sav. & Loan Ass'n herein, and the office address of said attorney is Ocean Center Building, Long Beach 2, Calif.

That on August 26, 1946, affiant served the within Cross claim to enforce legal and equitable claims, etc. upon counsel above named by depositing a true copy thereof in the United States mail box at Los Angeles, California, in a sealed envelope with postage thereon fully prepaid and addressed to said counsel as follows: Charles K. Chapman, Ocean Center Building, Long Beach 2, Calif.

That there is a regular communication by mail between the place of mailing and the place so addressed.

MARJORIE McCOY.

Subscribed and sworn to before me this 26th day of August 1946.

[NOTARIAL SEAL] RUBY E. SLOANAKER,
Notary Public in and for said County and State.

623 Received copy of the within Cross Claim this 26 day of August 1946.

WESTOVER AND SMITH,
By WYCKOFF WESTOVER,
Attorney for Plaintiffs.

Received copy of the within Cross-Claim this 26 day of August 1946.

JAMES M. CARTER,
U. S. Atty.,
By U. ALLEN,
Attorneys for Fahey, Ammann & Federal Home Loan Bank of Portland.

624 In the United States District Court

[Title omitted.]

[File endorsement omitted.]

Affidavit for order directing service of process outside the district, or for publication thereof (Judicial Code, §57; 28 U.S.C. §118)

Filed Aug. 27, 1946

625 SOUTHERN DISTRICT OF CALIFORNIA,
County of Los Angeles, ss:

C. E. Berry, being first duly sworn, deposes and says: He is an officer, to wit, vice president, of Federal Home Loan Bank of Los Angeles, a body corporate and cross-claimant in the above entitled action, and he makes this affidavit for and on its behalf. Said cross-claim is brought to enforce legal and equitable claims to, to obtain possession of and to remove liens from and clouds upon title to property, within the meaning of Section 57 of the Judicial Code, and for other and general relief. Said property is located within the State of California and is more particularly described in the cross-claim on file herein, reference to which is hereby made for further particulars. The larger portion of said property is located within the Southern District of California.

John H. Fahey is joined as a cross-defendant to said cross-claim, both individually and as Chairman of the Federal Home Loan Bank Board purportedly serving as Federal Home Loan Bank Commissioner. Said Fahey is not an inhabitant of nor is he found within the Southern District of California; his duties as above set forth require his presence in Washington in the District of Columbia, and he is to be found in said District at the office of
626 the Federal Home Loan Bank Administration at 101 Indiana Avenue NW., in said City of Washington.

Wherefore, affiant prays on behalf of cross-claimant that an order issue directing personal service upon said Fahey either outside the Southern District of California and in the District of Columbia or, in the event such personal service be not practicable, then that said Fahey

be served by publication in manner and form as provided in Section 57 of the Judicial Code.

C. E. BERRY.

Subscribed and sworn to before me this 22nd day of August 1946.

RUBY E. SLOANAKER,
Notary Public in and for the County of Los Angeles, State of California.

627 In the United States District Court

[Title omitted.]

[File endorsement omitted.]

Order directing service of process outside the district, or for publication thereof

Filed Aug. 27, 1946

628 Upon reading and filing the affidavit of C. E. Berry presented herewith, and good cause appearing;

It is ordered that cross-defendant John H. Fahey, individually, and cross-defendant John H. Fahey, as Chairman of The Federal Home Loan Bank Board purportedly serving as Federal Home Loan Bank Commissioner, and each of them, unless they shall have heretofore voluntarily appeared in the above entitled action, be and they each hereby are directed, on or before October 29, 1946, to appear, plead, answer or move to the cross-claim herein, and that, if practicable, a copy of this order, together with a copy of the cross-claim herein, be personally served upon each of said cross-defendants by the United States Marshal for the District of Columbia, at the office of the Federal Home Loan Bank Administration at 101 Indiana Avenue, N.W., in the City of Washington, D. C.; or, if such personal service be not practicable, that this order be published once a week for seven consecutive weeks in Los Angeles Daily Journal, a newspaper of general circulation within the County of Los Angeles and the Southern District of the State of California; and

In the event said cross-defendants or either of them shall not appear, plead, answer or move within the time so limited as above set forth, or within such further time

as the Court in its discretion may allow, the Court
629 will, upon proof of the service or publication of this order and of the performance of the direction contained in the same, entertain jurisdiction and proceed to the hearing and adjudication of the above entitled cross-claim in the same manner as if said cross-defendants and each of them had been served with process within this District; such adjudication, in such event, to affect only the assets and properties which are the subject of said cross-claim under the jurisdiction of this Court as being within the State of California, with portions thereof being within the Southern District of California.

Dated: August 27, 1946.

WM. G. MATHES, *Judge.*

630 In the United States District Court

[Title omitted.]

[File endorsement omitted.]

Summons on cross-claim
Filed Oct. 14, 1946

631 To the above named Cross-Defendant John H. Fahey, as Chairman of the Federal Home Loan Bank Board, purportedly serving as Federal Home Loan Bank Commissioner:

You are hereby summoned and required to serve upon Messrs. O'Melveny & Myers and Richard Fitdpatrick, attorneys for cross-claimant, whose addresses are, respectively, 433 South Spring Street, Los Angeles 13, California, and 1400 Chapman Building, Los Angeles 14, California, an answer to the cross-claim which is herewith served upon you, by October 29, 1946, after service of this summons upon the United States Attorney for the Southern District of California, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the cross-claim.

EDMUND L. SMITH,
Clerk U. S. District Court,
Southern District of California.
By EDW. F. DREW,
Deputy Clerk.

Date: Aug. 27, 1946.

632 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Summons on Cross-Claim, Certified Copy of Order Directing Service of Process Outside the District, or for Publication thereof, and copy of Cross-Claim on the therein-named United States of America, by handing to and leaving a true and correct copy thereof with Ronald Walker, authorized to accept service for James M. Carter, United States Attorney, personally at Los Angeles, Calif. in said District on the 27th day of August, 1946.

ROBERT E. CLARK,
U. S. Marshal.
By F. B. MANHART,
Deputy.

633 RETURN ON SERVICE OF WRIT

Re: Paul Mallonee v. John H. Fahey

UNITED STATES OF AMERICA,
District of Columbia, ss:

I hereby certify and return that I served the annexed Summons On Cross-Claim, addressed to Cross-Defendant John H. Fahey, as Chairman of the Federal Home Loan Bank Board, purportedly serving as Federal Home Loan Bank Commissioner; Order Directing Service Of Process Outside The District, Or For Publication Thereof; and Cross-Claim To Enforce Legal And Equitable Claims To, To Obtain Possession Of, And To Remove Liens From And Clouds Upon Title To, Property And For Other And General Relief; on the therein named: Cross-Defendant John H. Fahey, as Chairman of the Federal Home Loan Bank Board, purportedly serving as Federal Home Loan Bank Commissioner by handing to and leaving a true and correct copy thereof with John H. Fahey personally at Washington, D. C. in said District on the 7th day of October, 1946.

Marshal's Fee—$2.00.

W. BRUCE MATTHEWS,
U. S. Marshal.
By THOMAS R. EAST,
Deputy.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Summons on Cross-Claim, Certified Copy of Order Directing Service of Process Outside the District, or for Publication thereof, and copy of Cross-Claim on the therein-named United States of America by mailing a true and correct copy thereof to: The Attorney General, Washington, D. C., by registered mail, personally at Los Angeles, California in said District on the 27th day of August, 1946.

ROBERT E. CLARK,
U. S. Marshal.
By F. B. MANHART,
Deputy.

634 In the United States District Court

[Title omitted.]

[File endorsement omitted.]

Summons on cross-claim
Filed Oct. 14, 1946

635 To the above named Cross-Defendant John H. Fahey, individually:

You are hereby summoned and required to serve upon Messrs. O'Melveny & Myers and Richard Fitzpatrick, attorneys for cross-claimant, whose addresses are, respectively, 433 South Spring Street, Los Angeles 13, California, and 1400 Chapman Building, Los Angeles 14, California, an answer to the cross-claim which is herewith served upon you, by October 29, 1946. If you fail to do so, judgment by default will be taken against you for the relief demanded in the cross-claim.

EDMUND L. SMITH,
Clerk U. S. District Court,
Southern District of California.
By EDW. F. DREW,
Deputy Clerk.

Date: Aug. 27, 1946.

636 RETURN ON SERVICE OF WRIT

Re: Paul Mallonee v. John H. Fahey

UNITED STATES OF AMERICA,
District of Columbia, ss:

I hereby certify and return that I served the annexed Summons On Cross-Claim, addressed to Cross-Defendant John H. Fahey, individually; Order Directing Service of Process Outside The District, Or For Publication Thereof; and Cross-Claim To Enforce Legal And Equitable Claims To, To Obtain Possession Of, And To Remove Liens From And Clouds Upon Title To, Property And For Other And General Relief; on the therein named: Cross-Defendant John H. Fahey, individually by handing to and leaving a true and correct copy thereof with John H. Fahey personally at Washington, D. C. in said District on the 7th day of October, 1946.

W. BRUCE MATTHEWS,
U. S. Marshal.
By THOMAS R. EAST,
Deputy.

637 In the United States District Court

[Title omitted.]

[File endorsement omitted.]

Summons on cross-claim
Filed Sept. 11, 1946

638 To the above named Cross-Defendant Federal Home Loan Bank of Portland, sometimes known and referred to as Federal Home Loan Bank of San Francisco:

You are hereby summoned and required to serve upon Messrs. O'Melveny & Myers and Richard Fitzpatrick, attorneys for cross-claimant, whose addresses are, respectively, 433 South Spring Street, Los Angeles 13, California, and 1400 Chapman Building, Los Angeles 14, California, an answer to the cross-claim which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the cross-claim.

EDMUND L. SMITH,
Clerk U. S. District Court,
Southern District of California.
By EDW. F. DREW,
Deputy Clerk.

Date: Aug. 27, 1946.

639 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Summons on Cross-Claim; Order Directing Service of Process Outside the District, or for Publication Thereof; and Cross-Claim to Enforce Legal & Equitable Claims To, To Obtain Possession Of, and to Remove Liens From And For Other And General Relief, on the therein named: Federal Home Loan Bank of Portland, sometimes known and referred to as Federal Home Loan Bank of San Francisco, by handing to and leaving a true and correct copy thereof with Coal Newell, Vice-President thereof; personally and with Ronald Walker, Asst. U. S. Atty., authorized to accept service for the U. S. Attorney, and by Registered Mail to the U. S. Attorney General, at Los Angeles, California in said District on the 29th day of August, 1946.

ROBERT E. CLARK,
U. S. Marshal.
By J. D. LAVELLE,
Deputy.

640 In the United States District Court

[Title omitted.]

[File endorsement omitted.]

Answer of third party defendant Federal Home Loan Bank of Los Angeles
Filed Aug. 26, 1946

Federal Home Loan Bank of Los Angeles, a body corporate, for answer to the third party complaint of Long

Beach Federal Savings and Loan Association, a federal savings and loan association, admits, denies, and alleges as follows:

641 1. It admits each and every allegation in said third party complaint contained, except the following: It denies that Federal Home Loan Bank of San Francisco is or at any time was a Federal Home Loan Bank or that the same is or at any time was existing under or by virtue of the laws of the United States or that the same has or at any time has had a place at business anywhere. It alleges in this connection that "Federal Home Loan Bank of San Francisco" is but a name under which third party defendant Federal Home Loan Bank of Portland has been purportedly transacting business in California, Arizona, Nevada, and elsewhere since on or about March 29, 1946; and it denies each and every allegation in said complaint contained which treats of Federal Home Loan Bank of San Francisco as a legal entity capable of either transacting business or of being sued. It denies that it contends as is alleged with reference to the contentions of defendants in Paragraph XI of said complaint; and alleges that its contentions are as set forth in its cross-claim served and filed herewith; and it prays for relief as in said cross-claim set forth.

O'MELVENY & MYERS,
PIERCE WORKS,
JOHN WHYTE,
By Pierce Works,
PIERCE WORKS,
Richard Fitzpatrick,
RICHARD FITZPATRICK,
Attorneys for third party defendant Federal Home Loan Bank of Los Angeles.

642 STATE OF CALIFORNIA,
County of Los Angeles, ss:

Marjorie McCoy being first duly sworn, on oath says: That affiant is and was at the time of the service herein over the age of eighteen (18) years and not a party to the within proceeding; that she is a citizen of the United States and a resident of the County of Los Angeles, State

of California; that her business address is 900 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California:

That Charles K. Chapman is attorney of record for Long Beach Fed. Sav. & Loan Ass'n herein, and the office address of said attorney is Ocean Center Building, Long Beach 2, Calif.

That on August 26, 1946, affiant served the within Answer of third party defendant Federal Home Loan Bank of Los Angeles upon counsel above named by depositing a true copy thereof in a United States mail box at Los Angeles, California, in a sealed envelope with postage thereon fully prepaid and addressed to said counsel as follows:

Charles K. Chapman, Esq.
Ocean Center Building
Long Beach 2, Calif.

That there is a regular communication by mail between the place of mailing and the place so addressed.

MARJORIE McCOY.

Subscribed and sworn to before me this 26th day of August 1946.

[NOTARIAL SEAL]

RUBY E. SLOANAKER,
Notary Public in and for said County and State.

643 Received copy of the within answer this 26 day of August 1946.

WESTOVER & SMITH,
By WYCKOFF WESTOVER,
Attorney for Plaintiffs.

Received copy of the within answer this 26 day of August 1946.

JAMES M. CARTER,
U. S. Atty.,
By U. ALLEN,
Attorneys for Fahey, Ammann & Federal Home Loan Bank of Portland.

644 In the District Court of the United States
Southern District of California, Central Division
Civil Action No. 5421–P. H.

[File endorsement omitted.]

PAUL MALLONEE, ET AL., PLAINTIFFS

vs.

JOHN H. FAHEY, ET AL., DEFENDANTS

HOME INVESTMENT COMPANY OF LONG BEACH, A CORPORATION, INTERVENER

vs.

PAUL MALLONEE, ET AL., AND JOHN H. FAHEY, ET AL., DEFENDANTS IN INTERVENTION

THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, DEFENDANT AND THIRD PARTY PLAINTIFF

vs.

FEDERAL HOME LOAN BANK, ET AL., THIRD PARTY DEFENDANTS

ROBERT H. WALLIS, DEFENDANT AND THIRD PARTY DEFENDANT

vs.

JOHN H. FAHEY, ET AL., THIRD PARTY DEFENDANTS

TITLE SERVICE COMPANY, A CORPORATION, DEFENDANT AND THIRD PARTY PLAINTIFF

vs.

JOHN H. FAHEY, THIRD PARTY DEFENDANTS

Opinion
Filed Sept. 5, 1946

645 Before ORR, Circuit Judge, and HALL and LING, District Judges

ORR, Circuit Judge: The Long Beach Federal Savings and Loan Association was organized in 1934 under the Federal Home Loan Bank Act as amended. At the time of its incorporation its assets had a value of approximately $7,500. It has had the same president and board

of directors during the ensuing years under whose management and guidance the institution has expanded to a point where, at the time of the seizure hereinafter referred to, its assets were of a value of approximately $26,000,000. It was at the time of seizure entirely solvent, with assets, in addition to an amount sufficient to pay its obligations, in the form of reserves and undivided profits in the sum of $1,300,000.

On May 20, 1946, A. V. Ammann, by virtue of his appointment as a conservator for said institution by John H. Fahey, Administrator, took charge of said institution, and has since been in possession thereof. The conservator took over the Long Beach Federal Savings and Loan Association without notice or hearing of any kind. Subsequent to the taking possession of the bank an administrative hearing was ordered.

Plaintiffs are shareholders in the Long Beach Federal Savings and Loan Association. Several petitions in intervention and third party claims have been filed. All but one of them have joined in the motions of the original plaintiff for injunction.

Temporary orders were issued restraining the merger of the institution with other institutions of like character and restraining the commissioner from holding an administrative hearing.

At the request of certain of the parties a three-judge court was convened under authority of § 380 (a) of the Judicial Code (28 U.S.C.A. § 380(a)).

Defendant Ammann has challenged the jurisdiction of the three-judge court to hear and determine the application for the restraining orders on the ground that the provisions of § 380 (a) have no application to the law and the facts as presented by said applications. Defendant Ammann's position is: That the instant proceeding seeks to restrain the operation of rules and regula-
646 tions promulgated by the Board rather than the enforcement, operation or execution of or setting aside in whole or in part of an act of Congress on the ground that the law itself is unconstitutional.

We think the contention is without merit.

Authority to do the acts sought to be restrained, if found to exist, must be bottomed on subsection (d) of

§ 5[1] of the Federal Home Loan Bank Act as amended. It is on the direct operation of this statute that the commissioner must rely.

Threatened action under the authority of the statute is sought to be restrained on the ground that the statute is unconstitutional and void in that it attempts to confer legislative power on the board. Clearly this proceeding comes within the provisions of § 380 (a) and the question is required to be heard by a three-judge court.

Appellants concentrate their attack on subsections (a) and (d) of § 5 of the Act. It is argued that subsection (d), in attempting to authorize the board to make rules and regulations for the purposes mentioned in said subsection (d) delegates legislative power to the board without prescribing either adequate, or any statement of policy, standards, limitations or criteria to guide the board in exercising its functions and is contrary to Article I, Section 1, and Article I, Section 8, (paragraph 18), of the Constitution of the United States (U.S.C.A. Constitution, Article I, Sec. 8, Clause 18).

It is agreed that functions of the legislature may not be delegated by the Congress to any executive or executive department, hence, there is posed a single question for determination, to-wit: Has the Congress made such a delegation in the sections of the Act under consideration? Fortunately the course to be followed in determining questions of this character had been well chartered by the Supreme Court of the United States. We
647 have but to endeavor to make the proper application of the principles by said court enunciated to the conditions existing in the matter before us. We refer particularly to Panama Refining Co. v. Ryan, 293 U. S. 388, and Schechter v. U. S., 295 U. S. 495. We look to the statute to see whether the Congress has declared a policy with respect to the providing of rules and regulations for the reorganization, consolidation, merger, or liquidation of federal savings and loan associations, including the power to appoint a conservator or receiver

[1] 12 U.S.C.A. §1464(d): "(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

to take charge of the affairs of any such association, and to require an equitable readjustment of the capital stock of the same; and to release any such association from such control and permit its further operation;—"Whether the Congress has set up a standard for the president's (board's) action; whether the Congress has required any finding by the president (board) in the exercise of the authority" to do the things enumerated in Sec. 5 (d) of the Act. (Panama Refining Co. v. Ryan, supra, p. 415) It may be said of Sec. 5 (d), as was said of the section involved in the Panama case, that it is "brief and unambiguous". It makes no attempt to lay down rules for the guidance of the board, nor does it state in what circumstances or under what conditions the board is to merge institutions or appoint a conservator or receiver. It establishes no criterion to govern the board's course. It does not require any finding by the board as a condition of its action. No policy is declared by Congress as to merger, or appointment of conservator. The section gives to the Board unlimited authority to formulate rules for the board's action in the respects mentioned and to do so as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to govern itself. We are unable to find in the Act a declaration of policy or standard of action which can be deemed to relate to the subject of section 5 (d).

The Los Angeles Bank, with assets of $43,000,000 was merged with a Portland bank and later both with a bank in San Francisco. While the legality of this merger is not before us we consider it because the aim of a statute may be learned "both from its terms and from the administrative practice under it." Schechter v. 648 U. S., supra. The merger was made without notice or hearing of any character. In fact, none is required by the statute and herein lies a fatal defect as to its constitutionality.[2]

We think due process requires a hearing on notice and this should be provided within the Act itself.

[2] Ohio Valley Water Co. v. Ben Avon, 253 U. S. 287; Coe v. Armour Fertilizer Works, 237 U. S. 413; Hovey v. Elliott, 167 U. S. 409; See also, Boeing Air Transp. v. Farley, 75 F 2d., 765.

Comparison of the Home Owners Loan Act of 1933, as amended, under consideration here, with other acts of Congress which have been held unconstitutional because of improper delegation of legislative power, demonstrates that said Home Owners Loan Act fails to set up as comprehensive and definite statements of policy, standards, guides, criteria and limitations as do those acts.[3]

We hold Sec. 5 (d) of Home Owners Loan Act of 1933, as amended, unconstitutional and void as attempting to delegate legislative power to the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.

Let judgment be entered in accordance with this opinion.

WM. E. ORR,
United States Circuit Judge.
DAVE W. LING,
United States District Judge.
PEIRSON M. HALL,
United States District Judge.

649 In United States District Court

[Title omitted.]

Minute order
Sept. 9, 1946

This cause coming on for hearing on motion of the cross-claimant, Title Service Company, for permission to file supplemental cross-claim in interpleader, pursuant to notice thereof filed August 9, 1946; Messrs Thomas and Wallace by H. O. Wallace, Esq., appearing as counsel for the Title Service Co., Cross-Claimant; and Messrs Smith and Westover by Stedman Smith, Esq., appearing as counsel for the plaintiffs; James M. Carter, U. S. Attorney, by Ronald Walker, Assistant U. S. Attorney, appearing as counsel for the defendants:

On motion of Attorney Wallace it is ordered that the cause be, and it hereby is, continued to September 23, 1946, at 10 A.M., and that in view of Opinion filed herein that counsel prepare Findings of Fact and Conclusions of Law

[3] National Industrial Recovery Act; Panama Refining Co. v. Ryan, 293 U. S. 388; Schechter Poultry Co. v. U. S., 295 U. S. 495; Bituminous Coal Conservation Act of 1935; Carter v. Carter Coal Co., 298 U. S. 238; See also, Ohio Valley Water Co. v. Ben Avon, 253 U. S. 287.

and Judgment in accordance with the said Opinion. And the Court further orders that the Temporary Restraining Order heretofore made will, upon the consideration recited in the order made at the time it was made be extended and continued in effect until the filing and entry of the Order or Judgment made upon the decision of the Court heretofore filed or on the Opinion heretofore filed, and all parties, and time to plead, whether plaintiffs or defendants or cross-defendants, or cross-third party claimants, or what not, is also extended until 20 days after the entry of the Order or Judgment upon the Opinion of the Court heretofore filed.

654 In the District Court of the United States

Motion for preliminary injunction in re interference with operation of Long Beach Federal Savings and Loan Association

Filed Sept. 14, 1946

656 Come now, the Plaintiffs and the Defendant, Long Beach Federal Savings and Loan Association, and move this honorable Court for a preliminary injunction restraining and enjoining the Defendant, A. V. Ammann, and his subordinates, servants, agents, deputies and employees, and each of them, from interfering in any way with the management and operation of the Defendant, Long Beach Federal Savings and Loan Association by its duly elected officers, and

Further, they and each of them be particularly restrained and enjoined from selling, conveying, transferring, mortgaging, pledging, hypothecating, setting over or otherwise disposing of any of the property, records and assets of the Long Beach Federal Savings and Loan Association over which he, or they, or any of them, have received possession or control, to any person, firm or corporation, excepting only the duly elected officers, or any of them, of the said Long Beach Federal Savings and Loan Association; and in furtherance hereof, said Defendant, A. V. Ammann, his subordinates, servants, agents, deputies and employees, and each of them, be ordered and directed to forthwith deliver to the officers and attorneys, or any of them, of the Defendant, Long Beach Federal Savings and

Loan Association, all of the records, property, and assets, of every kind and nature, and wheresoever located, of, or relating to, the Long Beach Federal Savings and Loan Association, and to make, execute and deliver unto said officers or attorneys, or any of them, any and all documents necessary to vest all its right, title and interest in and to said property and assets, in said association in, and to, any and all such property, records and assets.

And further, that the Defendant, A. V. Ammann, and his subordinates, servants, agents, deputies and employees, and each of them be restrained and enjoined from asserting or setting up any estate, right, title, interest, claim, lien, encumbrances, in, to, upoon, or relating to, the
657 property, records and assets or any part thereof of the said Long Beach Federal Savings and Loan Association without the order of this Honorable Court so to do, being had and obtained.

And further, for an order to prevent the threatened immediate irreparable damage, loss and detriment to the shareholder members of the said Long Beach Federal Savings and Loan Association, and for the reasons above set forth herein, that a Temporary Restraining Order be granted without notice to expire at 10:00 A.M. on the ——— day of ———, 1946, unless prior thereto, for good cause shown, said Order be extended in accordance with Rule 65(b) of the Federal Court Rules.

Dated at Los Angeles, California this 11 day of September 1946.

CHARLES K. CHAPMAN,
and
WESTOVER AND SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER.

658. Received copy of the within document this 11th day of September 1946.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant, Long Beach Federal Savings & Loan Association.

Received copy of the within document this 11th day of September 1946.

Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for Defendant and Cross-Claimant, Robert H. Wallis.

Received copy of the within document this 11th day of September 1946.

THOMAS AND WALLACE,
By H. O. Wallace,
H. O. WALLACE,
Attorneys for Defendant and Cross-Claimant Title Service Company.

Received copy of the within document this 13th day of September, 1946.

JAMES M. CARTER,
United States Atty.,
RONALD WALKER
and MILDRED KLUCKHOHN,
Asst. U. S. Attorney,
and MOE SILVERMAN, Esq.,
By MILDRED L. KLUCKHOHN,
Attorneys for defendant A. V. Ammann, individually and as Conservator.

659 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Notice of motion for preliminary injunction in re interference with operation of Long Beach Federal Savings and Loan Association

Filed Sept. 14, 1946

660 To The Defendants John H. Fahey, individually, and John H. Fahey as Federal Home Loan Bank Commissioner, A. V. Ammann, individually, and A. V. Ammann as purported Conservator for the Long Beach Federal Savings and Loan Association; and

To James Carter, United States Attorney, and Ronald Walker and Mildred Kluckhohn, Assistant United States Attorneys, and Moe Silverman of the Nebraska Bar, their attorneys of record; and

661 To the Federal Home Loan Bank of Los Angeles, and O'Melveney and Myers and Richard Fitzpatrick, its attorneys.

You and each of you will Please Take Notice that plaintiffs and the defendant Long Beach Federal Savings and Loan Association will appear in the District Court of the United States, Southern District of California, State of California, before the Honorable Judge Peirson M. Hall at Court Room No. Three in the United States Federal and Postoffice Building at Temple and Spring Streets in the City of Los Angeles, County of Los Angeles, State of California, on the —— day of ————, 1946, at the hour of —— o'clock of said day and as soon thereafter as counsel can be heard and will then and there present to the Honorable Court the following Motion, to wit:

"Now come the Plaintiffs and the defendant Long Beach Federal Savings and Loan Association in the above entitled action and move this Honorable Court for a Temporary Restraining Order enjoining and restraining the defendant A. V. Ammann and his subordinates, servants, agents, deputies and employees, and each of them, from directly or indirectly during the pendency of the above entitled action and until further order of this Honorable Court from interfering in any way with the management and operation of the defendant Long Beach Federal Savings and Loan Association by its duly elected officers;

"And further that they and each of them particularly be restrained and enjoined from selling, conveying, transferring, mortgaging, pledging, hypothecating, setting over, or otherwise disposing of, any of the property, records, assets of the Long Beach Federal Savings and Loan Association over which he, or they, or any of them, have received possession or control, to any person firm, or corporation, excepting only the duly elected officers, or any of them, of the Long Beach Federal Savings and Loan Association;

662 "And further that the said defendant A. V. Ammann and his servants, agents, deputies, subordinates and employees, and each of them be ordered and directed to forthwith deliver to the officers and attorneys, or

any of them, of the defendant Long Beach Federal Savings and Loan Association, all of the records, property, and assets of every kind and nature and wheresoever located, of, or relating to, the Long Beach Federal Savings and Loan Association, and to make, execute and deliver unto said officers or attorneys, or any of them, any and all documents necessary to vest all its right, title and interest in and to said property and assets in said Association in, and to, any and all such property, records, and assets;

"And further that the defendant A. V. Ammann and his servants, agents, deputies, subordinates and employees, and each of them, be restrained and enjoined from asserting or setting up any estate, right, title, interest, claim, lien, encumbrance, in, to, upon, or relating to, the property, records and assets or any part thereof of the said Long Beach Federal Savings and Loan Association without the order of this Honorable Court so to do, being first had and obtained.

"The above motion is made upon the grounds that unless so restrained and enjoined by this Honorable Court from so doing the defendant A. V. Ammann and his servants, agents, deputies, subordinates and employees will continue through mismanagement and otherwise, to dissipate and diminish the assets of the defendant Long Beach Federal Savings and Loan Association to the irreparable damage of the shareholder members thereof; and that this fact is particularly true following the rendering of the opinion of the three judge court herein, holding Section 5(d) of the Home Owners' Loan Act of 1933 as amended, unconstitutional and void; and which said opinion has been widely known to the investing public, and as a result, the public and investors and shareholder members
663 are now well informed that because of the unconstitutionality of the portion of said Act, the purported Conservator has been and is acting without authority and is only a trespasser upon the premises of said Association and intergloper in the business of the Association, all of which facts in a financial institution, if allowed to continue unrestrained may well increase the present nervousness of investors and destroy the public confidence in the stability of the institution, thereby causing irreparable damage and the loss of one of the primary assets of the

institution to-wit: the good will of the investing public and their confidence in its stability and the integrity of the management.

"By virtue of the unlawful seizure of the said Association by the defendant A. V. Ammann, the title to thousands of parcels of real property in Southern California have become clouded and thus prevent the reconveyance of a clear and marketable title to borrowers who have paid their obligations in full, thereby causing great distress to many innocent parties and will continue and grow worse unless the rightful officers are forthwith restored to the management of said Association.

"The granting of the requested restraining order will stop the depletion of assets by withdrawals which have resulted in a material loss of assets of approximately $10,000,000.00.

"That further it is anticipated that there may be considerable delay in settling the Findings of Fact, Conclusions of Law and Decree of the Statutory Court as counsel have been informed that the counsel for the defendants Ammann and Fahey do not agree with prevailing counsel as to the form and contents of the proposed Findings of Fact, Conclusion of Law and Decree, and it is anticipated that some time will elapse before judgment is entered due to the causes set forth in the supporting affidavit of H. O. Wallace attached hereto for which reason prompt relief will not be afforded and the requested restraining order is essential.

"This Motion is made and based upon the records, 664 files and proceedings herein, the opinion of the three judge statutory court and the supporting affidavits attached hereto.

"Dated this 11 day of September 1946.

"WESTOVER AND SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.
Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for defendant Long Beach Federal Savings and Loan Association.

Concurrence

"Defendant and cross-claimant, Title Service Company, by and through its attorney undersigned herewith concurs in the foregoing motion and urges that the same be granted in order to facilitate and expedite the issuing of reconveyances on those deeds of trust wherein said Title Service Company is the Trustee and upon which payments in full have been made as set forth in said motion and upon which said Title Service Company is receiving requests in increasing numbers for aid in clearing title.

"Dated this 11 day of September 1946.

"THOMAS AND WALLACE,
By H. O. Wallace,
H. O. WALLACE,
Attorneys for Title Service Company.

"Defendant and cross-claimant Robert H. Wallis, by and through his attorney undersigned herewith concurs in the foregoing motion and urges that the same be granted.

665 "Dated this 11th day of September 1946.

Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for defendant and Cross-claimant Robert H. Wallis."

This Motion will be made and based upon the records, files and proceedings herein, the opinion of the Statutory Court convened under the provisions of Section 380(a) of Title 28, U.S.C.A., and the supporting affidavits attached to and filed with the Motion for Temporary Restraining Order in re Interference with Operation of Long Beach Federal Savings and Loan Association.

This Notice of Motion made and dated this 11 day of Sept., 1946 at Los Angeles.

CHARLES K. CHAPMAN,
Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for defendant Long Beach Federal Savings & Loan Assn.
WESTOVER AND SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

666 Received copy of the within Document this 11th day of September 1946.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant, Long Beach Federal Savings and Loan Association.

Received copy of the within Document this 11th day of September 1946.

Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for Defendant and Cross-Complainant, R. H. Wallis.

Received copy of the within Document this 11th day of September 1946.

THOMAS AND WALLACE,
By H. O. Wallace,
H. O. WALLACE,
Attorneys for defendant Title Service Company.

Received copy of the within Document this —— day of September 1946.

JAMES M. CARTER,
United States Attorney,
RONALD WALKER,
Asst. U. S. Attorney,
and MOE SILVERMAN, Esq.,
By MILDRED L. KLUCKHOHN,
Attorneys for the defendant A. V. Ahmann individually and as Conservator.

667 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit
Filed Sept. 14, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

William MacArthur, being first duly sworn, deposes and says:

That he is now, and since before the 20th day of May,

1946, has been, the Supervisor of Accounting for the Long Beach Federal Savings and Loan Association. That since said 20th day of May, 1946, he has worked under the supervision of A. V. Ammann, the purported Conservator for said Association. That in his capacity as Supervisor of Accounting he has access to a part, but not all, of the records of said Association.

That the balance sheet of said Association, on the 12th day of September, 1946, showed, among other things, that the sum of $4,729,156.01 was on deposit in commercial banking account in the name of "A. V. Ammann, as Conservator for the Long Beach Federal Savings and Loan Association", said account being with the Third and American Avenue Branch of the Bank of America, National Trust and Savings Association, in Long Beach, California.

That substantially all of the sum of $4,729,156.01, represents the balance of the proceeds of the sales of United States Government bearer bonds sold by the said A. V. Ammann on July 10, 1946 and July 29, 1946, all as set forth in an affidavit made by this affiant on the 10th day of September, 1946. That said bonds had been the property of said Long Beach Federal Savings and Loan Association prior to its seizure by the said A. V. Ammann on the 20th day of May, 1946. That prior to such sale said bonds had been income-producing as set forth in said affidavit, but that since the sale thereof and the deposit of the proceeds of said sale, the money derived from the sale of said bonds has lain idle and not producing any income for said association.

That the records of said association also disclose that funds belonging to said Association were invested in stock of the Federal Home Loan Bank of San Francisco, by the said A. V. Ammann, in the sum of $266,700.00 and that stock of the Federal Home Loan Bank of Los Angeles was exchanged for stock in the Federal Home Loan Bank of San Francisco in the sum of $341,700.00, making a total of $608,400.00 of the funds of said association invested by the said A. V. Ammann in stock of the Federal Home Loan Bank of San Francisco. That all of said investment and exchange was done without the knowledge or consent of

the officers or directors of said Long Beach Federal Savings and Loan Association.

That the records of said Association also disclose and reflect that promissory notes on which said Association is the payee and the trust deeds securing the same have been pledged by the said A. V. Ammann with the Federal Home Loan Bank of San Francisco in the approximate amount of $10,000,000.00, having been pledged as collateral for loans made by said Federal Home Loan Bank to said Conservator, said promissory notes and trust deeds
669 being a part of the subject matter of the bill in the nature of interpleader heretofore filled by the Title Service Company, a corporation, the Trustee under said trust deeds.

That United States bearer bonds, the property of said Association and in its possession on the 20th day of May, 1946, are no longer physically located in the premises occupied by the Association and that affiant has no information or belief as to their disposition, but that the books and records of said association do not disclose that the same have been sold.

That the records of said association further disclose that there is as of the 12th day of September, 1946, the sum of $7,300,000.00 as the unpaid balance on loans borrowed on the sole signature of the said A. V. Ammann, as the purported Conservator for said Association, from the Federal Home Loan Bank of San Francisco.

Further affiant sayeth naught.

Dated at Long Beach, California, this 13th day of September, 1946.

WILLIAM MACARTHUR.

Subscribed and sworn to before me this 13th day of September 1946.

[SEAL] H. O. WALLACE,
Notary Public in and for said County and State.

670 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit

Filed Sept. 14, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

S. I. Bacon, being first duly sworn, deposes and says: That on the 13th day of September, 1946, he stationed himself near the rear of the premises located at 328 American Avenue, Long Beach, California, the premises of the Long Beach Federal Savings and Loan Association, at a point where he could observe the rear of said building and a portion of the parking lot in the rear thereof. That he took up said position at 5:00 p.m. and remained there until approximately 8:45 p.m.

That at 5:08 p.m., A. V. Ammann, known to affiant personally, came from the rear of said building carrying two large manila folders which appeared to be quite well filled, and approximately one and one-half (1½) inches in thickness, and proceeded in the direction across said parking lot to where his automobile was parked.

671 That in so doing, he passed from the sight of affiant. That he returned within one (1) minute and returned in the direction from which he had come, but that he did not have the two large manila folders which he had theretofore had.

That at 5:14 p.m., one Ray Williams, personally known to affiant, one of the assistants of A. V. Ammann, came from the direction of said building carrying four (4) or five (5) large and well filled brief cases. He proceeded to an automobile, placed the said brief cases therein, got into said automobile and drove away.

That at 5:28 p.m., Robert Moore, an employee of said A. V. Ammann, and F. M. Bourland, a special representative of the Federal Home Loan Bank Administration and Loan Specialist now in charge of the department making new real estate loans for the said Long Beach Federal Savings and Loan Association under the direction of said A. V. Ammann, both personally known to affiant, both came from the direction of said building. The said

Robert Moore had two large manila envelopes in one hand and a well filled paper bag in the other hand, and the said F. M. Bourland had several large manila folders and packages in his hands. That affiant thereafter, and almost immediately, saw the said Bourland drive away in a car known to affiant to be generally used by said A. V. Ammann, and that as he drove away, affiant observed two large envelopes in the rear window behind the seat similar to those which affiant had previously observed being carried by said A. V. Ammann, as hereinabove set forth. That said Robert Moore drove away in an automobile known to affiant to be the property of Long Beach Federal Savings and Loan Association.

Further affiant sayeth naught.

Dated at Long Beach, California, this 13th day of September, 1946.

S. I. BACON.

Subscribed and sworn to before me this 13th day of September, 1946.

[SEAL] H. O. WALLACE,
Notary Public in and for said County and State.

672 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion for temporary restraining order in re interference with operation of Long Beach Federal Savings and Loan Association

Filed Sept. 14, 1946

673 Now come the Plaintiffs and the defendant Long Beach Federal Savings and Loan Association in the above entitled action and move this Honorable Court for a Temporary Restraining Order enjoining and restraining the defendant A. V. Ammann and his subordinates, servants, agents, deputies and employees, and each of them, from directly or indirectly during the pendency of the above entitled action and until further order of this Honorable Court from interfering in any way with the management and operation of the defendant Long Beach Federal Savings and Loan Association by its duly elected officers;

And further that they and each of them particularly be

restrained and enjoined from selling, conveying, transferring, mortgaging, pledging, hypothecating, setting over, or otherwise disposing of, any of the property, records, assets of the Long Beach Federal Savings and Loan Association over which he, or they, or any of them, have received possession or control, to any person
674 firm, or corporation, excepting only the duly elected officers, or any of them, of the Long Beach Federal Savings and Loan Association;

And further that the said defendant A. V. Ammann and his servants, agents, deputies, subordinates and employees, and each of them be ordered and directed to forthwith deliver to the officers and attorneys, or any of them, of the defendant Long Beach Federal Savings and Loan Association, all of the records, property, and assets of every kind and nature and wheresoever located, of, or relating to, the Long Beach Federal Savings and Loan Association, and to make, execute and deliver unto said officers or attorneys, or any of them, any and all documents necessary to vest all its right, title and interest in and to said property and assets in said Association in, and to, any and all such property, records, and assets;

And further that the defendant A. V. Ammann and his servants, agents, deputies, subordinates and employees, and each of them, be restrained and enjoined from asserting or setting up any estate, right, title, interest, claim, lien, encumbrance, in, to, upon, or relating to, the property, records and assets or any part thereof of the said Long Beach Federal Savings and Loan Association without the order of this Honorable Court so to do, being first had and obtained.

The above motion is made upon the grounds that unless so restrained and enjoined by this Honorable Court from so doing the defendant A. V. Ammann and his servants, agents, deputies, subordinates and employees will continue through mismanagement and otherwise, to dissipate and diminish the assets of the defendant Long Beach Federal Savings and Loan Association to the irreparable damage of the shareholder members thereof; and that this fact is particularly true following the rendering of the opinion of the three judge court herein, holding Section 5(d)
675 of the Home Owners' Loan Act of 1933 as amended, unconstitutional and void; and which said opinion

has been widely known to the investing public, and as a result, the public and investors and shareholder members are now well informed that because of the unconstitutionality of the portion of said Act, the purported Conservator has been and is acting without authority and is only a trespasser upon the premises of said Association and interloper in the business of the Association, all of which facts in a financial institution, if allowed to continue unrestrained, may well increase the present nervousness of investors and destroy the public confidence in the stability of the institution, thereby causing irreparable damage and the loss of one of the primary assets of the institution to-wit: the good will of the investing public and their confidence in its stability and the integrity of its management.

By virtue of the unlawful seizure of the said Association by the defendant A. V. Ammann, the title to thousands of parcels of real property in Southern California have become clouded and thus prevent the reconveyance of a clear and marketable title to borrowers who have paid their obligations in full, thereby causing great distress to many innocent parties and will continue and grow worse unless the rightful officers are forthwith restored to the management of said Association.

The granting of the requested restraining order will stop the depletion of assets by withdrawals which have resulted in a material loss of assets of approximately $10,000,000.00.

That further it is anticipated that there may be considerable delay in settling the Findings of Fact, Conclusions of Law and Decree of the Statutory Court as counsel have been informed that the counsel for the defendants Ammann and Fahey do not agree with prevailing counsel as to the form and contents of the proposed Findings of Fact, Conclusion of Law and Decree,
676 and it is anticipated that some time will elapse before judgment is entered due to the causes set forth in the supporting affidavit of H. O. Wallace attached hereto for which reason prompt relief will not be afforded and the requested restraining order is essential.

This motion is made and based upon the records, files,

and proceedings herein, the opinion of the three judge statutory court and the supporting affidavits attached hereto.

Dated this 11th day day of September, 1946.

WESTOVER AND SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.
Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for defendant Long Beach Federal Savings and Loan Association.

Concurrence

Defendant and cross-claimant Title Service Company, by and through its attorney undersigned, herewith concurs in the foregoing motion and urges that the same be granted in order to facilitate and expedite the issuing of reconveyances on those deeds of trust wherein said Title Service Company is the Trustee and upon which payments in full have been made as set forth in said motion and upon which said Title Service Company is receiving requests in increasing members for aid in clearing title.

Dated this 11 day of September, 1946.

THOMAS AND WALLACE,
By H. O. Wallace,
H. O. WALLACE,
Attorneys for Title Service Company.

677. Defendant and cross-claimant Robert H. Wallis, by and through his attorney undersigned, herewith concurs in the foregoing motion and urges that the same be granted.

Dated this 11th day of September, 1946.

Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for defendant and cross-claimant Robert H. Wallis.

Presented by:
WESTOVER AND SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

678 In the District Court of the United States

[Title omitted.]

Affidavit of William C. Mac Arthur

STATE OF CALIFORNIA,
County of Los Angeles, ss:

William C. Mac Arthur, being first duly sworn, deposes and says:

That he is the Supervisor of Accounting of the Long Beach Federal Savings and Loan Association, one of the Defendants in the above entitled and numbered matter. That he has been employed in such capacity since the 20th day of May, 1946, the date on which A. V. Ammann, as the purported Conservator of said Association, took possession thereof. That in his capacity as such Supervisor of Accounting he has access to part, but not all, of the records of said association in the hands of said purported Conservator. That the following data is based on
679 his personal knowledge from inspection of records of said Association in the hands of said purported Conservator since the 20th day of May, 1946.

That the records of said association, as seen by affiant, reflect that on the 10th day of July, 1946, the said purported Conservator sold, on the open market, United States bearer bonds, 1¾ percent, 1948, of the face value of $150,000.00; and United States bearer bonds, 2 percent, 12/5, 52-54, of the face value of $500,000.00, which bonds belonged to the Long Beach Federal Savings and Loan Association and came into the hands of said purported Conservator when he took over the assets of said Association on the 20th day of May, 1946.

That thereafter, and on the 29th day of July, 1946, said purported Conservator also sold on the open market the following described United States Bearer Bonds, belonging to said Association, which had also come into his hands when he took over the assets of said Association:

$2,700,000.00, 2½ percent, 6/15, 62-59;
150,000.00, 2½ percent, 9/15, 72-67;
300,000.00, 2½ percent, 59-62;
1,200,000.00, 2¼ percent, 12/15, 62.

That other records which have come under the inspec-

tion of affiant disclose that on the 29th day of July 1946, the said purported Conservator invested funds of said Association in United States bearer bonds of the face value of $150,000.00 for which he paid a bonus of 3-3/32 percent.

That on May 24, 1946 said purported Conservator invested funds of said Long Beach Federal Savings and Loan Association in the Federal Home Loan Bank of San Francisco in the sum of $75,000.00 and that on the 1st day of July, 1946 he invested additional funds belonging to said Association in said Federal Home Loan Bank of San Francisco in the sum of $191,700.00.

680 That since said 20th day of May 1946 the said purported Conservator has exchanged stock in the Federal Home Loan Bank of Los Angeles for stock of the Federal Home Loan Bank of San Francisco in the face value of $341,700.00.

That said Federal Home Loan Bank of San Francisco is the banking institution purportedly established by John H. Fahey as the Federal Home Loan Bank Commissioner on the 29th day of March 1946 contemporaneously with the order purportedly dissolving the Federal Home Loan Bank of Los Angeles, which orders are under attack and the authority so to do which is being challenged in that certain action now pending in this Honorable Court entitled "Federal Home Loan Bank of Los Angeles, Etc, et al., vs. Federal Home Loan Bank of Portland, Etc., et al.," the same being numbered 5677-W.M. in the files of said Court.

That the purported Conservator set up as charges against the Long Beach Federal Savings and Loan Association the sum of $17,000.00 representing the charges for the said Conservator and his staff for the first forty (40) days of his possession of said Association, or an average of $425.00 per day. That affiant has been informed by deputies of said Conservator, and on that ground alleges, that the expense of said Conservator and his staff have continued at about the same rate since the 20th day of May, 1946. That said expense is in addition to the salaries of the former regular employees of said Association who have been retained by said Conservator and the normal fixed operating charges for said Association.

That substantially all of the promissory notes and deeds of trust securing the same on which the Long Beach Federal Savings and Loan Association was the payee and beneficiary have been removed from the premises of said Association and affiant is informed and believes, have been deposited with the Los Angeles Branch of the Federal Home Loan Bank of San Francisco, as collateral for loans made to said Conservator in the approximate amount of $7,000,000.00.

681

That the sum of approximately $4,500,000.00 have been deposited in commercial banking accounts in the name of "A. V. Ammann, Conservator for the Long Beach Federal Savings and Loan Association."

That the records seen by affiant also reflect the payment of a premium for a surety bond in favor of John H. Fahey, as Federal Home Loan Bank Commissioner, in the principal sum of $100,000.00, as security for the faithful performance by the said A. V. Ammann as the appointed Conservator of the said Long Beach Federal Savings and Loan Association of his duties as the purported Conservator of the Long Beach Federal Savings and Loan Association. That said bond is the only bond in effect to insure the faithful performance of his duties by the said A. V. Ammann, and that said bond runs only in favor of the said John H. Fahey, as Federal Home Loan Bank Commissioner, and that the same in no way protects the said Long Beach Federal Savings and Loan Association, its officers, directors or shareholders.

Dated at Long Beach, California, this 10th day of September, 1946.

WILLIAM C. MACARTHUR.

Subscribed and sworn to before me this 10th day of September, 1946.

[SEAL] BERTHA E. CUMPTON,
Notary Public in and for said County and State.
My Commission expires Dec. 26, 1949.

682 In the District Court of the United States

Affidavit of G. A. Walker

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Comes now G. A. Walker who being first duly sworn deposes and says:

First, that he is the President of the Farmers & Merchants Bank of Long Beach, a banking corporation with its principal place of business in the city of Long Beach, County of Los Angeles, State of California;

Second, that for over ten years last past the Long Beach Federal Savings and Loan Association with offices at 328 American Avenue, Long Beach, California, have carried a substantial commercial account at the Farmers & Merchants Bank of Long Beach in amounts varying from $500,000.00 to $1,500,000.00 or thereabouts;

Third, that on or about the 24th day of July 1946, A. V. Ammann, Conservator of the Long Beach Federal Savings and Loan Association withdrew from the Farmers & Merchants Bank of Long Beach the sum of $500,000.00 in one check, and that again on the 26th day of July 1946, said A. V. Ammann, Conservator of the said Long
683 Beach Federal Savings and Loan Association withdrew from the said Farmers & Merchants Bank of Long Beach a further sum of $500,000.00 in one check, and on the same day an additional check for the sum of $566,000.00, and that the balance carried in a commercial account in the Farmers & Merchants Bank of Long Beach is approximately $60,000.00.

And fourth, that this affidavit is made by the affiant at the request of the Board of Directors of the Long Beach Federal Savings and Loan Association.

G. A. Walker,
G. A. WALKER.

Subscribed and sworn to before me this 10th day of September 1946, a notary public in and for the County of Los Angeles, State of California.

[SEAL] GRACE SMITH,
Notary Public in and for Los Angeles County, Calif.
My commission expires April 16, 1947.

684 In the District Court of the United States

[Title omitted.]

Affidavit of Leon Frazer

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Leon Frazer, being first duly sworn, deposes and says: That on and prior to May 20, 1946, he was employed by the Long Beach Federal Savings and Loan Association in the capacity of Escrow Officer.

That following the seizure of said association on May 20, 1946, by A. V. Ammann, as the purported Conservator thereof, affiant was retained in said position until his resignation on or about the 26th day of June, 1946. That a copy of his letter of resignation is attached hereto, marked Exhibit "A" and by reference made a part hereof.

That on April 15, 1946, M. C. Stanford and
685 Frances J. Stanford, husband and wife, did make arrangements for and obtain a loan from said Long Beach Federal Savings and Loan Association in the sum of $4,275.00, and did make, execute and deliver to said association their promissory note for said amount and deed of trust securing the same, which deed of trust was, on May 1, 1946, recorded in the office of the County Recorder of Los Angeles County. That said loan was for the purpose of paying the costs of erecting a building on the real property which was the subject matter of said deed of trust and that the money therefore was not actually paid to said borrowers, but was transferred into the account carried at said Association for the purpose of paying out to the subcontractors to be employed by said borrowers as construction progressed.

That thereafter said M. C. Stanford and Frances J. Stanford informed affiant that they had been unable to secure the services of subcontractors and that said loan was to be cancelled. Affiant was thereupon directed by his superiors in said association to prepare a cancellation order for said loan, which he, in fact, did do. That the seizure of said association on May 20, 1946, as above set forth, happened before a reconveyance was made of said deed of trust and before the physical cancellation

of said promissory note. That the last time that affiant saw said documents in the premises of said association they were still intact and not cancelled.

That after the 26th day of June, 1946, affiant accepted employment with the Title Service Company, a corporation. That said Title Service Company was the trustee under the deed of trust hereinabove described and referred to which was executed by the same M. C. Stanford and Frances J. Stanford.

That on or about the 20th day of July, 1946, there was delivered to said Title Service Company, and came to the attention of affiant, a letter from the said
686 A. V. Ammann, as the purported Conservator of said Long Beach Federal Savings and Loan Association, enclosing said deed of trust, promissory note and a request for reconveyance of said trust deed executed by said A. V. Ammann, and an affidavit executed by the same A. V. Ammann. That when so received the promissory note and deed of trust had been mutiliated by having the signatures torn therefrom. That true and correct copies of said promissory note and deed of trust, as mutilated, are attached hereto, marked Exhibits "B" and "C", respectively, and by reference are made a part hereof. That a true and correct copy of said affidavit is atttached hereto, marked Exhibit "D", and by reference made a part hereof.

That between the 20th day of May, 1946, and the 26th day of June, 1946, affiant noticed innumerable cases of loose business practice on the part of the staff of said A. V. Ammann and a failure on their part to keep adequate records, such as were equipped to be kept, and which were, in fact, kept, by said association when it was in possession of its business, and that such loose practice will make it very difficult for said conservator to render any adequate account when and if said association is returned to its original management.

Dated at Long Beach, California, this 10th day of September, 1946.

LEON FRAZER.

Subscribed and sworn to before me this 10th day of September, 1946.

[SEAL] BERTHA E. CUMPTON,
Notary Public in and for said County and State.

687 *Exhibit "A"*

JUNE 26, 1946.

Mr. A. V. Ammann,
Conservator, 328 American Avenue, Long Beach 2, California.

DEAR SIR: I hereby advise you that I will not longer serve as an employee during your occupation of Long Beach Federal Savings and Loan Association.

I have served the Association since October 1, 1937, except for the period during which I served the United States Army during the war.

I have taken this action as a result of your obvious determination to continue to destroy the Association, your unwarranted and unfair treatment of the public, and the abuse and intimidation of the employees.

Under your intolerable dictation I can no longer properly serve our clients.

Yours very truly,

LEON FRAZER.

688 *Exhibit "B"*

Construction

Do not destroy this note: When paid, this note, with Deed of Trust securing same, must be surrendered to Trustee for cancellation, before reconveyance will be made.

NOTE SECURED BY DEED OF TRUST

$4275.00 LONG BEACH, CALIFORNIA, April 15th, 1946.

For value received I promise to pay to Long Beach Federal Savings and Loan Association, a federal corporation, or order, at the office of Long Beach Federal Savings and Loan Association, the principal sum of Forty-two Hundred hereof, 19__, on unpaid principal at the rate of 6 per cent per annum, interest payable monthly on the 15th day of each month for the period from April 15th, 1946, to July 15th, 1946, both dates inclusive; commencing August 15th, 1946, principal and interest payable in monthly installments of Forty-two and 75/100 dollars each, on the 15th day of each month, and continuing until said principal and interest have been paid in full. (Balance of note illegible.)

689 *Exhibit "C"*

This Deed of Trust, Made this 15th day of April, 1946, between M. C. Stanford and Frances J. Stanford, who acquired title as Francis J. Stanford, husband and wife, herein called Trustor, whose address is.....
(Street and Number)
.....
(City) (State)

Title Service Company a Corporation, of Bellflower, California, herein called Trustee, and Long Beach Federal Savings and Loan Association, a Corporation, Long Beach, California, herein called Beneficiary,

Witnesseth: That Trustor irrevocably grants to trustee in trust, with power of sale, that property in Los Angeles County, California, described as: All of Lots 91 and 92 except the southwest 40 feet thereof, Tract 10503, City of Lynwood, County of Los Angeles, State of California, as per map recorded in Book 158, Pages 3 and 4 of Maps.

Together with all buildings and improvements now or hereafter placed thereon, and the rents, issues and profits therefrom, it being understood and agreed that all classes of property attached or unattached used in connection therewith shall be deemed fixtures.

For the purpose of securing: (1) Payment of the sum of $4275.00 with interest thereon according to the terms of a promissory note or notes of even date herewith, made by Trustor, payable to the order of the Beneficiary and extensions or renewals thereof; (2) Payment of such additional sums with interest thereon, as may be hereafter borrowed from the Beneficiary by the then record owner or owners of said property when evidenced by another promissory note or notes. (3) Performance of each agreement of Trustor herein contained.

690 A. To protect the security of this Deed of Trust, Trustor agrees:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring

any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. To provide and maintain in force, at all times, fire, earthquake and other insurance each in an amount satisfactory to, and with loss payable to said Beneficiary. Said insurance policies shall be in form and content satisfactory to Beneficiary, shall be written through such agency as said Beneficiary may designate, and shall be delivered to and remain in possession of Beneficiary as further security for the faithful performance of these trusts. Neither Trustee nor Beneficiary shall be responsible for such insurance or for the collection of any insurance moneys, or for any insolvency of any insurer or insurance underwriter. Any and all unexpired insurance shall inure to the benefit of and pass to the purchaser of the property conveyed hereby at any Trustee's sale held hereunder. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

4. To pay: at least ten days before delinquency, all general and special City and County taxes, and all assessments on appurtenant water stock, affecting said property; when due, all special assessments for public improvements, and not permit any improvement bond to issue for any such special assessment; on demand of Beneficiary, all other encumbrances, charges and liens, with interest, on said

property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any incumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto, and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at seven per cent per annum.

6. To insure the payment of taxes and assessments which are now or hereafter may be a lien upon the property described at least ten days before the delinquency thereof as provided for in paragraph A4 hereinabove, and to pay such premiums upon policies of insurance which may be required by the Beneficiary as provided for in paragraph A2 hereinabove, the Trustors agree to pay to the Beneficiary in addition to any other payments required hereunder, an installment of the taxes and special assessments levied or to be levied against the hereinabove described premises and an installment of the premium or premiums that will become due and payable to renew the insurance on the premises covered hereby and required by the Beneficiary, Trustor agreeing to deliver promptly to Beneficiary all bills and notices therefor. Such installments shall be equal to the estimated premium or premiums for such insurance and taxes and assessments next due (as estimated by Beneficiary) less all installments already paid therefor, divided by the number of months that are to elapse before one month prior to date when such premium or premiums and taxes and assessments will become delinquent. If the amounts paid to the Beneficiary under

the provisions of this paragraph are insufficient to discharge the obligation of the Trustor to pay such premium or premiums, taxes and assessments as the same become due, Trustor shall pay to Beneficiary upon its demand such additional sums as it may require to discharge Trustor's obligation to pay premium or premiums, taxes and assessments. At the option of Beneficiary, all moneys paid to Beneficiary under the terms of this paragraph shall be held by Beneficiary in trust to pay such premium or premiums, taxes and assessments before the same become delinquent, or may be credited directly to interest and principal due under the terms of the note secured hereby and upon payment by the Beneficiary of taxes, assessments and insurance premiums, the amount so paid shall be charged to the principal due upon the note secured hereby. If the Trustor shall fail to pay the installments provided for in this paragraph, such failure shall constitute a default under this Deed of Trust.

7. In the event of default in the payment of any of the monies to be paid under the terms of the note secured hereby or this deed of trust or in the performance of any of the covenants and obligations of this deed of trust, then any funds in the possession of the Beneficiary under the provisions of paragraph A (6) may, at the option of the Beneficiary, be applied to the payment of principal and/or interest upon the obligation secured hereby in lieu of being applied to any of the purposes for which the fund established under Paragraph A (6) is establish

B. It is mutually agreed that:

1. Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3. At any time or from time to time, without liability therefor and without notice, upon written request of Bene-

ficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge thereof.

4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a re-assignment of the rents, issues and profits hereinafter assigned to Beneficiary.

5. Upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary shall be entitled and may and is hereby authorized, without notice, and irrespective of whether declaration of default has been delivered to Trustee and without regard to the adequacy of the security for the indebtedness secured hereby, either personally or by attorney or agent, without bringing any action or proceeding, or, by receiver to be appointed by a court, to enter into possession and hold, occupy, possess and enjoy the said property, make, cancel, enforce or modify leases, obtain and eject tenants and set or modify rents and terms of rents, and to take, receive and collect all or any part of the rents, issues and profits thereof and, after paying such costs of maintenance and operation of said property as it in its judgment may deem proper, to apply the balance upon the entire indebtedness then secured hereby, the rents, issues and profits of said property being hereby assigned to Beneficiary as further security for the payment of such indebtedness; and the acceptance of such rentals, issues and profits shall not constitute a waiver of any other right which Trustee or Beneficiary may enjoy under this deed

or under the laws of California. The receipt and application by said Beneficiary of all such rents, issues and profits pursuant hereto, after execution and delivery of the Declaration of Default and Demand for Sale or during the pendency of Trustee's Sale proceedings hereunder, shall not cure such breach or default, nor affect said sale proceedings or any sale made pursuant thereto, but such rents, issues and profits, less all costs of operation and maintenance, when received by Beneficiary, shall be applied in reduction of the entire indebtedness from time to time secured hereby.

691 6. Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be duly filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

At least three months having elapsed after recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at seven per cent per annum; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. The Trustee named herein, or any successor or successors to any such Trustee may, from time to time, be substituted by the recording, in the County in which the property herein described is located, of a substitution executed and acknowledged by Beneficiary hereunder or Beneficiary's successors in interest. Beneficiary, or Beneficiary's successors in interest, shall upon election to substitute Trustees hereunder, cause a copy of such substitution to be mailed, prior to the recording thereof, to all persons to whom a copy of notice of default is required to be mailed by the provisions of the laws of the State of California; in the manner required by said laws. The substitution must contain the date of execution of this Trust Deed, the name of the Trustee, Trustor and Beneficiary hereunder, the book and page where this Trust Deed is recorded, and the name of the new Trustee, and affidavit attached to said substitution to the effect that notice has been given to the persons and in the manner above required. The substitution must also contain an acknowledgment signed and acknowledged by the then Trustee of the receipt of a copy of such substitution. Said Trustee shall execute and acknowledge receipt of a copy of the substitution upon delivery of a copy thereof to said Trustee, and the presentation of this Trust Deed and the note for inspection by said Trustee, and upon payment of all said Trustee's costs, fees or expenses. From the time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of the Trustee herein named. The procedure herein provided for substitution of Trustee shall be exclusive of all other provisions for substitution, statutory or otherwise.

8. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees,

administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9. Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee. (Balance of note illegible).

692 Recorder's Printed Form 187TT. Order No. 2393058; Escrow No. 9915. When recorded please mail to: Title Service Company, 328 American Avenue, Long Beach 2, Calif. Compared. Read by Winch. Document Books. Recorded at request of Title Insurance & Trust Co., May 1, 1946, at 8 A. M., in Book 23184, Page 3, of Official Records, County of Los Angeles, California. Fee $——— Folios———. Mame B. Beatty, County Recorder, By GW, Deputy Recorder.

693 *Exhibit "D"*

Affidavit

STATE OF CALIFORNIA,
County of Los Angeles, ss:

A. V. Ammann being first duly sworn deposes and says:

That he is Conservator for the Long Beach Federal Savings and Loan Association, Long Beach, California:

That according to the records of said association, a loan in the amount of $4275.00 to M. C. Stanford and Frances J. Stanford, was approved by the Board of Directors of said association:

That the note dated April 15, 1946, and Deed of Trust, dated April 15, 1946, securing said Note, which are attached hereto, were executed by the said M. C. Stanford and Frances J. Stanford to Title Service Company, a Corporation, of Bellflower, California, Trustee, for

Long Beach Federal Savings and Loan Association, a Corporation, Long Beach, California, Beneficiary, covering the following described property:

All of Lots 91 and 92 except the southwest 40 feet thereof, Tract 10503, City of Lynwood, County of Los Angeles, State of California, as per map recorded in Book 158, Pages 3 and 4 of Maps.

That said Deed of Trust was recorded May 1, 1946, in Book 23184, Page 3–, of Official Records, County of Los Angeles, California;

That the loan represented by said Note and Deed of Trust was never completed and no funds of the association were disbursed thereunder;

That at the request of said M. C. Stanford the said Note and Deed of Trust were returned to him;

That the signatures of said Note and Deed of Trust were torn off before the instruments were returned to Mr. M. C. Stanford.

A. V. AMMANN.

Subscribed to and sworn before me this 12th day of August 1946.

I. A. MERRILL,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Nov. 25, 1947.

694 In the District Court of the United States

Affidavit of Paul L. Mallonee

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Paul L. Malonee, being first duly sworn, deposes and says:

That he is one of the Plaintiffs in the above entitled and numbered action. That he, together with C. H. Newhouse and Winnie Bucklin, comprise a Shareholders' Committee representing the Shareholders in the Defendant Long Beach Federal Savings and Loan Association. That affiant is the chairman of such Shareholders' Committee.

695 That it is the opinion of affiant that said Long Beach Federal Savings and Loan Association is

being rapidly wrecked by the conservator, A. V. Ammann, and his staff now in possession of the assets of said association; and that the longer that said A. V. Ammann is allowed to remain in possession thereof, the greater the losses to the Shareholders will be.

That said Shareholders' Committee addressed form letters to all of the known shareholders of said Long Beach Federal Savings and Loan Association and did request that the shareholders of said Association execute proxies in favor of Shareholders' Committee and did provide a form of authorization and proxy to be signed by such Shareholders as desired to execute the same. That in response thereto proxies have been received by said committee representing considerably in excess of a majority of the shareholders in said Association.

That many letters have been received by affiant and the Association from shareholders and former shareholders in the Association expressing confidence in the management of the Association prior to its seizure on May 20, 1946; protesting the seizure; and indicating a desire for the return of the Association to its original management, officers and directors, and indicating an immediate desire to re-establish financial dealings when the Association might be returned to its original management.

That attached hereto, made a part hereof by reference are copies of sixteen (16) letters, memoranda, or other communications received by affiant from various persons, all of whom are or were shareholders in the Association prior to May 20, 1946.

That as evidenced by the attached letters, and particularly the letter from Mrs. C. W. Bryant, the affairs of the Association under the direction of the Conservator are being grossly mismanaged and negligently handled.

That affiant has talked to several hundred present and former shareholders of the Long Beach Federal Savings and Loan Association. That all of said persons to whom affiant has talked have expressed dissatisfaction with the management of said Association by A. V. Ammann as the purported Conservator thereof and have related to affiant innumerable instances of discourtesy, disrespect and inefficiency on the part of said

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purported Conservator and his staff, all of which reflect discredit on the Association and which will be difficult, if not impossible, for the original management to overcome when it is restored to possession of the Association.

That it is for the best interest of the shareholders in said Association and for the Association itself that the Conservator be removed at the earliest possible date and that the assets of the Association be returned to its officers, directors and management as the same existed on and immediately prior to May 20, 1946.

PAUL L. MALLONEE.

Subscribed and sworn to before me this 10th day of September 1946.

[SEAL] BERTHA E. CUMPTON,
Notary Public in and for said County and State.

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LONG BEACH, CALIF.,
July-17-46.

Mr. PAUL L. MALLENEE—
C. H. NEWHOUSE—
WINNIE BUCKLIN—

This letter may not be of much interest to you but, as you sent me these papers to sign will tell you of my experience with the loan Co. as if you look it up will find it so.

I only had $800.73 in the Federal Savings so drew all out ~~except $1.00.~~

The lady at the window was so rushed she handed me $3200 beside my $800.73 in cash.

It was so crowded at the window I got out and went over to the Bank of America 4th & Pine to put it in the Savings Account and told the clerk what happened and told him to put my $800.73 in and call them up to tell them so, he did and it was returned as I found out later.

My son and I went down to see if they didn't think they should at least reward me something but not much as a "Thank you" did they offer me.

So don't you think that was unfair as I wanted to be honest and fair myself—with them——

Yours Truly,

Mrs. C. W. BRYANT,
1325 Stanley Ave., Apt. 9, Long Beach, Calif.

698

CARROLL WEBERG
ATTORNEY AT LAW
521 South Bellflower Blvd.
BELLFLOWER, CALIFORNIA

JULY 10, 1946.

SHAREHOLDERS COMMITTEE, LONG BEACH FEDERAL SAVINGS & LOAN ASSN.
146 E. Third St., Long Beach 2, Calif.

Gentlemen: Mrs. L. C. Bryant of 6164 Pearce St. Bellflower, Calif. whose old address of 3767 Brayton Ave. Long Beach Calif. is shown on your records has consulted me in regard to the proxies forwarded to her.

I have advised her that in my opinion she should sign the proxies and do all she can to help the Committee. She has a total of only $200 invested in the concern so her proxies will not be much help but are enclosed for what they are worth. She does not know how many shares they represent.

Please change her address on your mailing list and keep her informed as to progress in returning this company to sound non-political management.

Sincerely,

CARROLL WEBERG,
By JOHN C. LANDIS.

699

ROY B. PUTNEY
TUNING AND SERVICING PIPE ORGANS, PIANOS, ELECTRONIC ORGANS
3036 VISTA STREET, LONG BEACH 3, CALIFORNIA.

JULY 5, 1946.

SHAREHOLDERS COMMITTEE OF LONG BEACH, FEDERAL SAVINGS & LOAN ASSOC.
146 E. Third St., Long Beach 2, Calif.

GENTLEMEN; I no longer have an account at the Federal Saving; thus, I am not a shareholder at this time. If and when this affair is settled I may open another account. Until then,

Yours Truly,

ROY B. PUTNEY.

700 DEAR MR. MALLONEE: I had intended to close the Federal Account before I left for the East on May 10th but just couldn't get over there—So on my return I attended to that—The trouble which had developed during my absence had no bearing on my actions. I regarded the Bank as perfectly safe. I am returning the proxies so that I may be accounted for.

Very truly,

HARRIET S. SHICK.

701 SHAREHOLDERS COMMITTEE OF LONG BEACH
FEDERAL SAVINGS AND LOAN ASSOCIATION
146 E. THIRD ST., LONG BEACH, CALIFORNIA

You are probably aware of the fact that John H. Fahey and A. V. Amman have seized the Long Beach Federal Savings and Loan Association, claiming to act under some governmental authority. A large number of the shareholders in the Association, fearing that the action of John H. Fahey and A. V. Amman may result in the unnecessary destruction of or injury to the Association have organized a protective committee to look after and protect the interests of the shareholders. Paul L. Mallonee, C. H. Newhouse, and Winnie Bucklin now constitute this Committee.

If the Committee is to effectively represent and protect the shareholders, it must have proxies and authorizations from a considerable number of shareholders. For this reason the enclosed form of proxy is sent to you, with the express understanding that if you sign it you shall be under no personal liability for any expenses of any kind, and you shall not be called on for any contribution. The purpose of this Committee is to protect the Association and its shareholders, and to assure local management of the Association.

Will you please sign the proxy and mail in the enclosed envelope.

PAUL L. MALLONEE,
Chairman

It is essential to return all three copies. Phone 742-83
I am no longer a shareholder; however in the future and things are straightened out will consider your bank again.

702 MINOCQUA, WISC.
July 10th, 1946.

FEDERAL SAVINGS & LOAN ASS.
Long Beach, Calif.

DEAR SIRS: I have this day received your letter asking me to sign papers.

I do this with the assurance that the old reliable and loyal parties remain in office and control of all funds.

As I do not have my papers here, and do not know at this time what share of funds of mine are in your possession, I am unable to state it on your paper, so will leave that to you to fill in.

Please change my mailing address here.

Very truly,

MILDRED C. BARNES.
c/o H. J. MELANY, Minocqua, Wisc.
R. F. D.

703 SHAREHOLDERS COMMITTEE OF LONG BEACH
FEDERAL SAVINGS AND LOAN ASSOCIATION
146 E. THIRD ST., LONG BEACH, CALIFORNIA

You are probably aware of the fact that John H. Fahey and A. V. Amman have seized the Long Beach Federal Savings and Loan Association, claiming to act under some governmental authority. A large number of the shareholders in the Association, fearing that the action of John H. Fahey and A. V. Amman may result in the unnecessary destruction of or injury to the Association, have organized a protective committee to look after and protect the interests of the shareholders. Paul L. Mallonee, C. H. Newhouse, and Winnie Bucklin now constitute this Committee.

If the Committee is to effectively represent and protect the shareholders, it must have proxies and authorizations from a considerable number of shareholders. For this reason the enclosed form of proxy is sent to you, with the express understanding that if you sign it you shall be under no personal liability for any expenses of any kind, and you shall not be called on for any contribution. The purpose of this Committee is to protect the Associa-

tion and its shareholders, and to assure local management of the Association.

Will you please sign the proxy and mail in the enclosed envelope.

PAUL L. MALLONEE,
Chairman.

It is essential to return all three copies. Phone 742-83.

Mr. PAUL L. MALLONEE: The third day after Mr. A. V. Amman took over I told Mr. Amman I was withdrawing our account as a protest against Fahey taken over.

LEON W. NEVINS.

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SHAREHOLDERS COMMITTEE OF LONG BEACH
FEDERAL SAVINGS AND LOAN ASSOCIATION
146 E. THIRD ST., LONG BEACH, CALIFORNIA

You are probably aware of the fact that John H. Fahey and A. V. Amman have seized the Long Beach Federal Savings and Loan Association, claiming to act under some governmental authority. A large number of the shareholders in the Association, fearing that the action of John H. Fahey and A. V. Amman may result in the unnecessary destruction of or injury to the Association have organized a protective committee to look after and protect the interests of the shareholders. Paul L. Mallonee, C. H. Newhouse, and Winnie Bucklin now constitute this Committee.

If the Committee is to effectively represent and protect the shareholders, it must have proxies and authorizations from a considerable number of stockholders. For this reason the enclosed form of proxy is sent to you, with the express understanding that if you sign it you shall be under no personal liability for any expenses of any kind, and you shall not be called on for any contribution. The purpose of this Committee is to protect the Association and its shareholders, and to assure local management of the Association.

Will you please sign the proxy and mail in the enclosed envelope.

PAUL L. MALLONEE,
Chairman.

It is essential to return all three copies. Phone 742-83.

P.S. I have no further interest in the Federal Savings. But I hope you succeed in your attempt for right.

Mrs. Beckman.

704½ Unfortunately I withdrew most of my money a few months ago—if it will be of any benefit, I will deposit $1,000—in more.

C. N. Bruner.

705 June 5th, 1946.

Shareholders Committee of L. B. Federal Loan & Savings Assn.

Gentlemen: I am returning papers to you as I do not have any money in the Federal Loan & Savings Co.

I would gladly sign if I could help as I consider the Action taken by John H. Fahey and A. V. Ammann one of the "Lousiest" moves that I have ever known of.

It is just another "New Deal Bureaucratic Action," coming from Mr. Roosevelts Administration.

Respectfully yours,

E. T. Phelps,
1930 Chestnut Ave., Long Beach 6, Calif.

706 Authorization and Proxy to Shareholders' Committee

No. 5834

To: Paul L. Mallonee, C. H. Newhouse and Winnie Bucklin, Shareholders' Committee:

The undersigned shareholders in the Long Beach Federal Savings and Loan Association protest its seizure by John H. Fahey and A. V. Ammann, which is resulting in the destruction of our Association and has deprived the directors and officers we elected from managing and operating our Association.

We do hereby constitute and appoint Paul L. Mallonee, C. H. Newhouse and Winnie Bucklin, or any of them, our Shareholders' Committee and our duly authorized agents and proxies, for all purposes and they are hereby vested with every right, power and authority of whatsoever character, nature or purpose to do any and all things necessary, or in their opinion advisable, including the

right to commence, continue and prosecute to conclusion any and all legal actions they or their attorneys may deem advisable, for and on behalf of and for the protection of our best interests, and to recover from the said John H. Fahey and A. V. Ammann, or others, the possession, management, control and operation of our Association, and all of its assets, and to restore our duly elected directors and officers, whoever they may be, to the full management, operation and control of our Association, and our said proxies or their appointees shall have full power in our name, place and stead to attend and to vote for, and on our behalf, and in our stead, the number of shares we would be entitled to vote if personally present at any and all meetings at which shareholders may be called upon to vote as fully as we could do if personally present, and they shall, in all respects hereunder, act as joint tenants.

We are not to be held personally liable for any expenses.

We hereby ratify and confirm all acts of our said agents and proxies, or their substitutes, which they have done or may hereafter do.

This proxy may be revoked by me upon thirty days written notice.

We own share number(s)——with an aggregate total of approximately $2,000 in the Long Beach Federal Savings and Loan Association.

We did own shares but withdrew them but will replace when the local men are serving us again. I found no fault with the management before Ammann took over.

Dated: This 8 day of July 1946.

MARIE DONAHEY,
HENRY B. DONAHEY,
(Shareholder).

707 JULY 6, 1946.

DEARE FRIEND: I have confidence in all of you. If I havent made there Proxy out alwright let me no.

With Best Wishes,

W. L. HOOVER.

708 and if they will be of any value to you, I'll be happy. I haven't the books with me, of course they were

turned in. In that case I think this proxy is void and I'm sorry if I cannot help. This whole deal is so thoroughly disgusting it makes me sick to think of it.

What is free America coming to?

Yours Sincerely,

Mrs. Garfield Berry,
421 East 3rd St., Long Beach.

709 Fed. Savings & Loan,
Long Beach.

I am not a shareholder but I expect to come in and reopen my account at my earliest convenience.

Mrs. C. B. Newhouse,
2246 Locust Ave., Long Beach.

710 Lakeside, Wash.,
July 15, 1946.

Federal Savings & Loan Assn.,
146 E. 3rd St., Long Beach 2, Calif.

Dear Sirs: The enclosed papers were forwarded to us.

We are sorry to have to report that we withdrew our money at the time of the seizure by the 'Gestapo'.

I will say however that when the proper ones have it back in their possession I certainly will deposit with you again.

I am signing the proxies.

711 July 15, 1946.

Gentlemen: I do not have my book with me and I have a $1,000 in Long Beach Federal Savings & Loan and do not know the amount of shares But sighning the Proxy.

Yours,

Otto B. and Carrie M. Fisher.

Will be in Long Beach Sept. 1st.

712 7/9/46.

My Son Richard has a seperate account at this bank in his own right. Isn't he also ~~entiled~~ entitled to a vote to help unseat the unwanted.

Earl L. Rausch,
5856 Orange, L. B. 24571.

Former address: 1509 Poinsettia St.

713 JULY 8, 1946.

SHAREHOLDERS COMMITTEE OF LONG BEACH, FEDERAL SAVINGS & LOAN ASSOC.,
146 E. Third. L. B. 2

I am enclosing the three copies of authorization and proxy—signed by me—BUT In a moment of panic on May 23 I withdrew my $4149.80. Though we had been assured that in these Federal Savings & Loan assoc. we were insured up to $5000.00—we had never yet seen this tested—so in order to save the principal—as I thought, I withdrew my account—with No interest from Jan 1, 1946–May 23, '46. If this seizure by Fahey and A. V. Ammann is illegal in anyway and the institution is solvent I do not see why in all honesty our interest cannot be paid. I was informed over the counter by one of the regular L. B. Federal Savings men that the institution (Gregory) was willing to pay the interest due from Jan 1 to the time of withdrawal—but that the government men would not permit this. It seems entirely wrong that we investors should lose our interest under the circumstances of the flury. This is not at all comparable to withdrawals under ordinary conditions. The press notice and the letter sent out two weeks after the crash—looks bad for the Institution. Cecil King writes me in response to my letter to him to withhold my judgment on the Institution. He speaks of a 'hearing' on the matter—but he too seems rather vague. What is the mystery?—What is all this talk about 'politics' entering into this loss that we have taken?

I hope this Committee will work on the interest matter. Somebody brought this crash about and the investors should not be penalized because they wish to rescue their principal.

Very truly yours,

JESSIE J. GLASS.

714 In the District Court of the United States

[Title omitted.]

Affidavit of Leona Hiestand

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Leona Hiestand, being first duly sworn, deposes and says:

That she has been an employee of the Long Beach Federal Savings and Loan Association in the bookkeeping department since the 20th day of May, 1946, the date when A. V. Ammann took possession of said association under a purported order appointing him Conservator;

That in the course of her employment she has had an opportunity to observe some of the acts of A. V. Ammann, and his agents, but not all of them. That she has had come to her personal knowledge on numerous occasions that cash has been paid from the share accounts without obtaining receipts or withdrawal orders signed by the shareholders, or any other evidence of the payment bearing the signature of said customer; she has ob-
715 served where accounts have been transferred from one book to another without the signature of the shareholder.

Affiant further says that it is common practice for the agents and employees of A. V. Ammann in taking receipts to fail to place thereon the balance remaining in the account, and in numerous occasions wrong balance is placed thereon, and repurchases are numerous where no signature of the customer appears.

Further affiant sayeth naught.

LEONA HIESTAND.

Subscribed and sworn to before me this 10th day of September 1946.

[SEAL]

Bertha E. Cumpton,
BERTHA E. CUMPTON,
Notary Public in and for said County and State.

716 In the District Court of the United States

[Title omitted.]

Affidavit of Clara Moore

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Clara Moore, being first duly sworn, deposes and says: That she has been an employee of the Long Beach Federal Savings and Loan Association in the bookkeeping department since the 20th day of May, 1946, the date when A. V. Ammann, took possession of said association under a purported order appointing him Conservator;

That in the course of her employment she has had an opportunity to observe some of the acts of A. V. Ammann, and his agents, but not all of them. That she has had come to her personal knowledge on numerous occasions that cash has been paid out from the share accounts without obtaining receipts or withdrawal orders signed by the shareholders and on numerous instances names on repurchase orders are different than the name on signa-
717 ture card; and on diverse occasions wrong amounts on unsigned ticket in comparison with withdrawal; numerous accounts have been transferred from one book to another without the signature of the shareholder having first been obtained; on one particular occasion under the instructions of L. R. Day, agent of A. V. Ammann, repurchase order was marked "paid by cash" without customer's signature and funds were transferred to a different account.

Affiant further says that it is common practice for the agents and employees of A. V. Ammann in taking receipts to fail to place thereon the balance remaining in the account, and in numerous occasions wrong balance is placed thereon, and repurchases are numerous where no signature of the customer appears.

Further affiant sayeth naught.

CLARA MOORE.

Subscribed and sworn before me this 10th day of September 1946.

Bertha E. Cumpton,

[SEAL] BERTHA E. CUMPTON,
Notary Public in and for said County and State.

718 In the District Court of the United States

[Title omitted.]

Affidavit of Frances Bond

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Frances Bond, being first duly sworn, deposes and says that she has been and now is an employee of Long Beach Federal Savings and Loan Association in the Federal Housing Loan Department and particularly since the 20th day of May, 1946, the date when A. V. Ammann took possession of said association under a purported order appointing him Conservator;

That during her term of employment, particularly in connection with loans insured by the Federal Housing Administration, she has had full charge of communications and correspondence between said Association and the Federal Housing Administration and that subsequent to said 20th day of May, 1946 she was directed by an agent of A. V. Ammann to notify the Federal Housing Administration on forms provided by the Federal Housing Administration in accordance with their regulations, that a certain loan had been paid in full and was of no further force or effect and, notwithstanding said affidavit
719 to FHA, said loan remained upon the books of said Association as a non-paid loan with the same regular monthly payments to be made until paid in full.

Affiant further sayeth, that upon receipt of the foregoing instructions from the agent of A. V. Ammann, she protested and was advised that this was common practice in the associations, which they had previously administered under conservatorship.

Further affiant sayeth naught.

FRANCES BOND.

Subscribed and sworn to this 10th day of September 1946.

[SEAL.]

BERTHA E. CUMPTON,
Notary Public in and for the County of Los Angeles, State of California.

720 In the District Court of the United States

[Title omitted.]

Affidavit of O. D. Brick

STATE OF CALIFORNIA,
County of Los Angeles, ss:

O. D. Brick, being first duly sworn, deposes and says: That he is the Superintendent of the Surety Department of Los Angeles Branch Offices of United States Fidelity and Guaranty Company;

That on or about May 4, 1935, the United States Fidelity and Guaranty Company wrote its Building and Loan Blanket Surety Bond guaranteeing the Long Beach Federal Savings and Loan Association against any and all losses arising from any dishonest, fraudulent or criminal act of any officer or employee of the assured, and also covers forgery of certain designated instruments,

721 burglary, robbery, larceny, hold-up, theft, misplacement, mysterious unexplainable disappearances, abstraction or removal from the possession of the insured of any property that are on the designated premises and also covers against larceny, embezzlement, robbery, burglary, hold-up, theft, misappropriation, misplacement, mysterious, unexplainable disappearance of property in transit to the insured, covering all of the then officers and directors who were the following: Thomas A. Gregory, J. H. Gregory, S. I. Bacon, J. S. Watts, J. K. Reeder, M. T. Killingsworth, and Ethel L. Barlow, in the penal amount of $10,000.00.

That on or about April 20, 1936, the penal amount of this surety bond was increased by endorsement to $15,000.00 and the name of Roy H. Wolfers was added as an additional officer.

That on or about August 18, 1936, the penal amount of this surety bond was increased to $20,000.00. That on or about November 16, 1936, the penal amount of this surety bond was increased to $25,000.00.

That on or about November 18, 1938, this surety bond was released and replaced with a new form of surety bond covering in slightly broader language all of the same risks and all of the same officers and directors in the increased penal amount of $30,000.00.

That on or about February 23, 1939, the penal amount of this surety bond was increased to $40,000.00 and on August 1, 1939, to $50,000.00; on November 18, 1939, to $55,000.00; on April 3, 1942, to $60,000.00; on June 7, 1943 to $65,000.00; on June 7, 1944 to $175,000.00, and on January 15, 1946, it was increased to $200,000.00 and is now in that amount.

That said surety bond is No. 14036-02-506-38 and has never been cancelled by the said United States Fidelity and Guaranty Company and no fidelity losses have
722 ever been paid under any of the above mentioned bonds at any time.

That this affiant on behalf of the United States Fidelity and Guaranty Company, at this time, is ready, willing and able to renew or re-write said bond, if so required, on the said named officers, or any of them.

Further affiant sayeth not.

O. D. Brick,
O. D. Brick.

Subscribed and sworn to before me this 11th day of September 1946.

[seal] Elizabeth A. Sheridan,
Notary Public in and for the said County and State.

My commission expires Nov. 5, 1948.

725 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Objections of defendant to proposed findings, conclusions of law and decree.
Filed Sept. 19, 1946

Comes now defendant, A. V. Ammann, and objects to the proposed findings of fact, conclusions of law and decree heretofore submitted by plaintiff's herein and as reasons for the objection respectfully shows to the Court:

1. That the Court is without jurisdiction to make such findings, conclusions of law, or decree.

2. That said proposed findings, conclusions of law, and decree purport finally to determine all of the issues of

law and fact in this cause although defendant's time to answer has not yet expired and no default exists.

3. That said findings are not based on evidence, proof or purported proof before the Court.

4. That they are contrary to the order of the Court as announced as the Presiding Judge at the time of the hearing as follows:

"In order that there be no confusion, so counsel will know exactly what they have to follow, we rule now we will not consider any question presented other than on the constitutionality of the statute under question."

726 5. That the plaintiffs have not standing in this Court to raise the question of constitutionality.

6. That even if the Court had jurisdiction and authority to make it, a determination of unconstitutionality does not finally determine all the issues that may properly be joined in this cause.

7. That the only matters that could properly be before the Court were (1) plaintiffs' motion for a preliminary injunction to restrain the merger or consolidation of the Long Beach Federal Savings and Loan Association, or the commingling of its assets with other institutions, and, (2) plaintiffs' motion for a preliminary injunction to restrain the holding of an administrative hearing.

8. That the only issue that could properly be before the Court and the only issue that could properly be decided by it was whether interlocutory injunctions should issue; that the only findings to make on such issue are: (1) Do substantial issues of law and fact under the Constitution of the United States exist? (2) Will irreparable injury to one party be prevented by the issuance of temporary injunctions? (3) Will undue inconvenience or loss be suffered by the other party by the issuance of such temporary injunctions?

9. That the Court is without authority to make final findings of fact without proof thereof.

10. That the Court is without authority to make final findings of fact and conclusions of law and enter a final decree prior to a ruling on the motion to dismiss heretofore filed, which motion to dismiss was, under the Court's ruling, not considered.

11. That the Court is without authority to make final

findings of fact and conclusions of law and enter a final decree prior to the expiration of the time for filing an answer.

12. That the proposed findings of fact and conclusions of law are an attempt on behalf of the plaintiffs to secure a settlement of the facts and the law in the case on a preliminary motion and without the introduction of any evidence.

13. That the proposed findings of fact and conclusions of law attempt to decide questions which were not
727 open on the hearing and prejudice the position of the defendant on final hearing.

14. That the proposed findings of fact and conclusions of law go beyond the question of a prima facie showing made for the purpose of obtaining a temporary injunction and proceed on assumptions of fact not sustained by any evidence and which defendants could negative by proof adduced at final hearing.

15. That the proposed findings of fact and conclusions of law constitute a pre-judgment on the part of the Court on questions of fact and law which have not yet been submitted to it and which at a later time may be properly before the Court for determination.

16. That the proposed findings of fact, conclusions of law and decree would preclude this defendant from making other and further defenses which he has and which he is entitled by law to make.

17. That the Court has not acquired jurisdiction of the person of John H. Fahey.

18. That jurisdiction of the person of John H. Fahey is indispensable to an injunctive decree against him and is indispensable to a final decree.

Without waiving any of the foregoing objections and if, in spite thereof, the Court makes final findings of fact and conclusions of law, defendant objects to the proposed findings and conclusions specifically as follows:

1. Proposed Finding I is contrary to fact as shown by the record for the reason that the record and the law show that the Long Beach Federal Savings and Loan Association was not organized under the Federal Home Loan Bank Act as amended, but under regulations issued pursuant to the Home Owners' Loan Act of 1933, as

amended; that the finding as to comparative assets and as to solvency are immaterial and irrelevant; and that there has never been a "seizure" of said institution but only an appointment of a conservator.

2. Proposed Finding II does not truly state the facts as shown by the record for the reason that the record shows that within the time fixed by the Rules and Regulations of the Federal Home Loan Bank Administration, the Long Beach Federal Savings and Loan Association demanded, in accordance with such regulations, an Administrative hearing and that the Federal Home Loan Bank Administration immediately after such demand, issued its order directing the holding of an administrative hearing in accordance with the demand.

728

3. Proposed Finding III is not in accordance with fact as shown by the record for the reason that the action is a derivative one.

4. Proposed Finding V is not in accordance with fact as shown by the record for the reason that there has never been a "seizure"; that the findings as to demand for change of policy and procedure and as to criticisms are immaterial and irrelevant.

5. Proposed Finding VI is contrary to fact as shown by the record in that there never has been a "seizure".

6. Proposed Finding VII is contrary to fact as shown by the record in that Order No. 5254 was not issued by defendant A. V. Ammann but by the Federal Home Loan Bank Administration.

7. Proposed Finding VIII is contrary to fact as shown by the record for the reason that no valid service of summons has ever been made on said John H. Fahey, but if the Court makes such finding, it should explicitly state the basis thereof.

729

Again without waiving its objections to the authority of the Court to make final findings of fact and conclusions of law and to enter a final decree herein, defendant objects to the proposed findings of fact and conclusions of law for the reason that if thereby the motion to dismiss heretofore filed by defendant, A. V. Ammann, is denied, defendant is entitled to findings of fact, among others, as follows:

1. That there was received in the office of the Federal Home Loan Bank Board shortly subsequent to its date, an application for permission to organize a Federal savings and loan association, subscription to shares consisting of three sheets, and petition for charter dated May 21, 1934, which petition was signed by T. A. Gregory, J. S. Watts, J. E. Gregory, J. K. Reeder and S. I. Bacon; that in said application for permission to organize, the following statement, among others, appeared:

"(4) Applicants agree not to represent themselves as authorized to organize such an association until this application is acted upon favorably by said Board or the chief executive officer of the Federal home loan bank of the district or a duly authorized organizer for the Board, and that upon such action they will proceed only in accordance with the provisions of Home Owners' Loan Act of 1933 and rules and regulations made thereunder."

That in said petition for charter, among others, are the following statements:

"5. Petitioners, in good faith, desire to promote thrift and home ownership in their community by the accumulation of funds for home financing in accordance with the provisions of said act and the rules and regulations made thereunder.

"7. Wherefore, petitioners pray that they, their associates, and successors, be incorporated and made a body corporate under said name and style with all powers, privileges, and immunities, and subject to such conditions and restrictions as are provided in said act and rules and regulations made thereunder."

730 2. That pursuant to such application and petition a charter, known as Charter E, was issued to the Long Beach Federal Savings and Loan Association, Long Beach, California, on July 10, 1934, and accepted by it; that said charter contained, among others, the following provisions:

"15. The association shall at all times be subject to the provisions of the Home Owners' Loan Act of 1933, providing for Federal savings and loan associations, and to any amendments thereof, and to any valid rules and regulations made thereunder as the same may be amended from time to time.

"19. The bylaws adopted by the association shall provide for the management of the association within the provisions of the law and this charter and the rules and regulations of the Federal Home Loan Bank Board.

"20. The association may be liquidated, merged, consolidated, or reorganized, as is provided in the rules and regulations for Federal savings and loan associations made by the Federal Home Loan Bank Board."

3. That at the time of the application for and issuance and acceptance of such charter, the following regulation was in full force and effect:

"14. Whenever it shall appear to the Federal Home Loan Bank Board that the interests of the creditors or shareholders of any such association are being jeopardized because such association has violated its charter, or is conducting its business in an unsafe or unauthorized manner, or if such association shall refuse to submit its books, papers, and concerns to the inspection of said Board, or any examiner appointed by said Board, or if any officer or director thereof shall refuse to be examined upon oath touching the concerns of any such association, or if any such association shall suspend payment of its obligations, or if from any examination or report provided for by these rules and regulations, the Board shall have reason to conclude that such association 731 is in an unsound or unsafe condition to transact business, or if any such association shall neglect or refuse to observe a lawful order of the Board, the Board may, on becoming satisfied of the existence of any or all of the conditions set forth above, forthwith appoint a receiver or conservator, and require of him such bond and security as it deems proper.

"Such receiver or conservator, under the direction of the Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and shall make prompt report to the Board of the condition of the association and shall, after 10 days' notice in writing to all shareholders, borrowers, and creditors of the association, sent by mail to their last address as shown on the books of the association, conduct a hearing at the office of the association or some other convenient place designated by

him in such notice, at which hearing any interested parties may submit any evidence as to the condition of the association or its management, and may submit any plan for its operation or for a disposition of its assets and a record shall be made and kept of such hearing, and one copy thereof filed with the Federal home-loan bank of which such association is a member and one copy submitted to the Federal Home Loan Bank Board of the evidence submitted at such hearing and the plans submitted for the operation of such association or for the disposition of its assets. The conservator or receiver may subp-ena witnesses, compel the production of books, records, and documents, swear witnesses, and examine them under oath, and may apply to any court of competent jurisdiction for the enforcement of such processes. Thereafter the conservator or receiver, as the case may be, shall recommend to the Federal Home Loan Bank Board a plan for liquidation, merger, consolidation, or reorganization of the association, and the Board shall give consideration to the same and enter an order providing for the release of the association and its
732 continued operation and the terms therefor or for its liquidation, merger, or consolidation and the terms therefor. Thereupon the conservator or receiver, as the case may be, shall proceed to dispose of the association as is provided in such order. All costs of such proceedings shall be approved by the Federal Home Loan Bank Board and assessed against the association and its assets and paid by the association or from its assets. In the event of a legal necessity therefor, the conservator or receiver, as the case may be, or any interested party, may apply to any court of competent jurisdiction for direction or for confirmation of any sale or disposition of assets, but said Federal Home Loan Bank Board shall have full and exclusive authority, power, and jurisdiction to take possession by a conservator or receiver and to hold and administer the assets on an equitable basis."

4. That on or about the 8th day of April, 1937, there was received by the Federal Home Loan Bank Board the petition of the Long Beach Federal Savings and Loan Association for an amendment to its charter, petitioning that the present charter of the Association be

amended to read in the form of Exhibit K of the rules and regulations for Federal savings and loan associations; that thereafter and on the 13th day of April, 1937, and pursuant to said petition, an amended charter was issued to said Long Beach Federal Savings and Loan Association and accepted by it, known as Charter K; that said Charter K contained, among others, the following provisions:

"3. Objects and powers.—The objects of the association are to promote thrift by providing a convenient and safe method for people to save and invest money and to provide for the sound and economical financing of homes. The statute, this charter, and rules and regulations made thereunder provide for examination and supervision and at the same time for the protection of all private rights concerned, and shall be construed in keeping with the best practices of local mutual thrift and home-financing institutions in the United States.

733 "The association shall have perpetual succession and power to sue and be sued, complain and defend in any court of law or equity; to have a corporate seal, affixed by imprint, facsimile or otherwise; to appoint officers and agents as its business shall require, and allow them suitable compensation; to have bylaws not inconsistent with the Constitution or laws of the United States, this charter, and rules and regulations of the Federal Home Loan Bank Board, providing for the management of its property and regulation and government of its affairs; to wind up and dissolve, merge, consolidate, or reorganize in the manner provided by law and rules and regulations made thereunder; and to conduct business in the territory of the United States except as otherwise limited is charter. The association may purchase, hold, and convey real and personal estate consistent with its objects, purposes, and powers; may mortgage or lease any real and personal estate; and may take such property by gift, devise, or bequest. Unless authorized by the Federal Home Loan Bank Board, the association may not invest in an office building or buildings for the transaction of the business of the association an amount representing the cost of land and buildings in excess of the sum of its undivided profits and reserve accounts."

5. That at the time of the application for and issuance and acceptance of such amended charter, the following regulation was in full force and effect:

"SEC. 51. (a) Whenever it shall appear to the Board that the interests of the creditors or members of any Federal association are being jeopardized because such association has violated its charter, bylaws, or these rules and regulations, or is conducting its business in an unsafe or unauthorized manner; or if such association shall refuse to submit its books and papers for inspection by the Board or any examiner appointed by the Board; or if any officer or director thereof shall refuse to be
734 examined under oath by a representative appointed by the Board concerning the affairs of any such association; or if any such association shall suspend payment of its obligations; or if the Board shall conclude that such association is in an unsafe or unsound condition to transact business; or if any such association shall neglect or refuse to observe a lawful order of the Board, the Board may, on becoming satisfied of the existence of any or all of the conditions set forth above, forthwith appoint a conservator for such association. Such conservator may propose a plan of reorganization to the Board. The Board may approve a reorganization of such a Federal association.

"(b) In the event that the Board determines that it is necessary to liquidate such association, the Board will appoint the Federal Savings and Loan Insurance Corporation as receiver for the purpose of liquidation.

"(c) Before the appointment of a conservator or receiver, the Federal association will be given opportunity to be heard; provided, however, that the Board may appoint a temporary conservator pending such hearing."

6. That since the 13th day of April, 1937, the said Association has continued to operate under said Charter K, which has been amended only in respect to the voting rights of members, bonus and bonus reserve provisions, and lending powers of the Association, that said amendments were made pursuant to proposals by the Association.

Without in any way waiving the objections hereinbefore

made, defendant objects to the proposed conclusions of law and the proposed decree for the following reasons:

1. Proposed Conclusion 1 is contrary to the opinion of the three judge court heretofore filed in that the opinion held Section 5 (d) of the Home Owners' Loan Act of 1933, as amended, unconstitutional and void only as attempting to delegate legislative power to the
735 Federal Home Loan Bank Board created under the Federal Home Loan Bank Act; that the opinion did not hold said Act unconstitutional as repugnant to Amendments Nos. IV and V of the Constitution of the United States.

2. Proposed Conclusions 2, 3, 4 and 5 are not based on any proper finding of fact nor on any matter properly before the Court.

3. Proposed Conclusion 6 is not based on any proper finding of fact nor on any matter properly before the Court and is a conclusion, which if made by the Court, would prematurely decide all the issues in this case.

4. The proposed decree, if entered by the Court at this time, would be premature and would amount to a final decree on the merits without the opportunity being given to the defendant to answer or set up his defenses to the complaint and the defendant objects to the entry of any decree at this time for all the reasons previously stated in his objections to the proposed findings of fact and conclusions of law.

Dated: September 18, 1946.

Respectfully submitted.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant United States Attorney,
Attorneys for defendant, A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association.

738 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Plaintiffs' response to defendants Fahey and Ammann's objections to proposed findings, conclusions of law, and decree and points and authorities in support of said response

Filed Sept. 21, 1946

739 Come now, the plaintiffs for themselves and on behalf of all shareholder members of the Long Beach Federal Savings and Loan Association and respond to the objections of the defendants Fahey and Ammann to the findings of fact, conclusions of law and decree, heretofore proposed by these plaintiffs, as follows:

I

The jurisdiction of a Federal Court having been invoked and it having assumed jurisdiction, the court's power to hear and determine extends to a complete disposition of the whole case and the entire controversy and enables the court to rest its judgment on the decision of such of the questions which in its opinion, effectively dispose of the case: Sterling v. Constantin (1932), 53 S. Ct. 190, 287 U. S. 378, 77 L. Ed. 375.

Chief Justice Hughes in affirming the order of interlocutory and permanent injunction, granted by a three-judge court (under Section 380, Title 28) restraining the Governor and certain military officials of Texas, from enforcing military orders restricting the production of the plaintiffs' oil wells, stated at Page 393 of the United States Reports opinion, as follows:

"The jurisdiction of the District Court so constituted, and of this Court upon appeal, extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decision of such of the questions as in its opinion effectively dispose of the case."

II

The purposes of the statute, (380 (a), Title 28 U. S. C.), are to provide an adequate hearing and a full

deliberation by three judges and there is no sug-
740 gestion in the statute, or in the effect intended by the statute, that the statutory court lacks any of the ordinary powers of a District Court which may be found useful in the performance of its duties, least of all, that such court lacks the ordinary and basic powers of a court of equity to protect both the parties and itself from fraudulent imposition directly affecting the litigation.

The cases "do not even hint that, once having assumed jurisdiction properly, such a court cannot exercise all of the ordinary equitable powers of a District Court in respect to such litigation." American Insurance Co. v. Lucas (1941), 38 Fed. Supp. 926 @ 932.

"It is an elementary maxim in equity jurisprudence that there is no wrong without a remedy." Leo Feist v. Young (7 CCA 1943), 138 Fed. (2d) 972 @ 974, in which case the Circuit Court of Appeals reversed the lower court's decision, which had entered a judgment for the defendant on the grounds that the plaintiff in not having licensed himself in the appropriate state was barred from bringing this copyright infringement action, the court stating:

"By refusing to grant plaintiff's prayer, the District Court not only deprived plaintiff of its copyright, but in effect gave judicial blessing to defendant's confiscation of it. Since equity seeks above all else to do justice, we cannot agree that a Court should supinely sit by while such unlawful appropriation occurs. It is an elementary maxim of equity jurisprudence that there is no wrong without a remedy and certainly plaintiff chose the proper forum and followed the statutorily prescribed pro-
741 cedure by which to assert that remedy." (974)

III

The broad equitable powers inherent in a court of equity to do justice summarily have been ratified and enlarged by Rule 54, Subd. (b) which states:

"Judgment at various stages: When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material

to a particular claim and all counter-claims arising out of the transaction or occurrence, which is the subject matter of the claim, may enter a judgment disposing of such claim."

And further along similar lines of broad equity Subd. (c) also states:

"Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." (Rule 54 (d) (c) Rules of Civil Procedure.)

Rule 1—referring to the interpretation of such rules states: "They shall be construed to secure the just, speedy and inexpensive determination of every action." (Rule 1—Rules of Civil Procedure.)

Response to the objections of the defendants to the Plaintiffs' proposed Findings, Conclusions of Law and Decree.

A

742 The defendant Ammann's objections Numbers 1 and 5 on Pages 1 and 2 attempt to suggest that this Statutory Court did not have jurisdiction to herein determine the constitutional question raised, which contention is obviously without merit. The defendant Ammann's objections to the effect that the "plaintiffs had no standing in this court to raise the constitutionality" is without merit, as we presume the doors of the courts of justice in United States are usually open to all plaintiffs as well as to the defendants and should be particularly available to these plaintiffs, who are suing as committee of shareholder members, bringing action for, and on behalf of over fifty-six (56%) percent of all of the shareholder members of the "seized" association in an effort to protect the rights of such shareholder members from this unconscionable, as well as unconstitutional seizure.

B

The defendant Ammann's objections 2-4-6-7-8-10-11-12-13-14-15-16, are all substantially the same and simply

reiterations in slighly varying language, which may all be summarized under the general heading of an objection that the proposed Findings, Conclusions of Law and Decree will in effect determine the entire litigation excepting only accountings and similar supplemental proceedings.

This Honorable Court composed of three judges and convened in conformance with the provisions of Section 380 (a) of Title 28 of U.S.C.A. after full hearing have already heretofore rendered its opinion that:

"Authority to do the act sought to be restrained if found to exist, must be bottomed on Subsection 5 (d) of the Federal Home Loan Bank Act, as amended, it is on the direct operation of this statute that the commissioner must rely.". This Honorable Court having further found that: "We hold Section 5 (d) of Home Owners Loan Act of 1933, as amended, unconstitutional and void as attempting to delegate legislative power to the Federal Home Loan Bank Board, created under the Federal Home Loan Bank Act."

It follows that such holding of unconstitutionality does finally determine all the issues that may properly be joined in this cause, and that, in compliance with the requirements of Rule 54 of Rules of Civil Procedure, and Rule 1 of Rules of Civil Procedure, this court should, and we presume is endeavoring to, and we hope will so construe Rule 54 as to secure the just, speedy and inexpensive determination of this action.

C

Defendant Ammann's objections numbers 3, 9 and 14, Pages 1 and 2 are obviously false and misleading statements as the proposed Findings heretofore submitted are based on evidence. Therefore this Honorable Court does, not only have authority to make final findings of fact, but is required so to do under the Law. (See Rule 52 (a) Rules of Civil Procedure.)

Numerous and extensive affidavits have heretofore been made and filed in this matter by the plaintiffs and the defendant Long Beach Federal Savings and Loan Association and interpleading defendants, to which no counter-

affidavits have been filed by the defendants Fahey or Ammann, nor either of them. As pointed out by the Honorable Pierson M. Hall at the time of hearing of argument on request for temporary restraining order and preliminary injunction to enjoin the defendants Ammann and Fahey from interfering in the operation and management of the Long Beach Federal Savings and Loan Association by its proper officers, which was held on Saturday, September 14, 1946, at Los Angeles, such affidavits not having been controverted said defendants thereby conceded that the allegations of the affidavits were correct. (See Page 69, Lines 7 and 8 Reporters Transcript.)

744 Defendant Ammann's objections numbers 17 and 18 again attempt to cloud the issue of unconstitutionality by seeking to question the court's jurisdiction over the entire matter by virtue of Mr. John H. Fahey having his official residence in Washington, which residence obviously cannot affect the constitutionality of the provisions of the act of Congress here in question.

While there no doubt has been some conflict, particularly in the older decisions, the more recent decisions apparently are consistent in holding that where the constitutionality of an act of Congress is involved the superior is not necessarily an indispensable party. Jarvis (Postmaster) v. Shachelton Inhaler Co. 136 F. (2d) 116 (June 1, 1943).

The court in affirming the lower court's issuance of a permanent injunction restraining the postmaster from interferring with the defendant's business stated:

"The fraud order was void as a matter of law. Appellant was excluding appellee from the use of the mails without authority. He was destroying appellee's mail order business, which was 95% of the whole. Was almost, if not altogether, a trespasser upon appellee's rights and privileges. * * * A stronger case for injunctive relief can hardly be stated. The Postmaster General did not seek to intervene. If he had done so, he would have been bound upon the question of the validity of the fraud order upon the record as made, just as we have indicated appellee was bound by it * * *."

"Courts of equity have always struggled against
745 technical rules, which impede rather than contribute to substantial justice." Decision was affirmed. (Page 122). Colorado vs. Toll (1924) 268 U.S. 228.

This is one of the leading cases determining the question as to whether or not the Superior officer is an indispensable party. The District Court of Colorado had dismissed a bill in equity brought by the State of Colorado, asking to enjoin the local superintendent of a national park from carrying out said park regulations, particularly with regard to automobile traffic, which regulations applied to the Rocky Mountain National Park, situated in the State of Colorado. Only the local park superintendent was made a party to the action without joining any of his superior officers. The United States Supreme Court, in reversing the District Court's order dismissing the bill in equity by an opinion written by Mr. Justice Holmes, stated as follows:

"The object of the bill is to restrain an individual from doing acts that it is alleged that he has no authority to do and that derogate from the quasi-sovereign authority of the State. There is no question that a bill in equity is a proper remedy and that it may be pursued against the defendant without joining either his superior officers or the United States. Missouri v. Holland, 252 U.S. 416, 431. Philadelphia Co. v. Stimson, 223 U.S. 605, 619, 620. As the bill was dismissed upon the merits it is not necessary to say more upon this preliminary question."

This case appears to be "on all fours" with the
746 instant litigation, even to the holding that there was involved the question of infringement of local state regulations and their position under the reserve powers of the Constitution of the United States. American School of Magnetic Healing vs. McAnnulty, 187 U.S. 94 (1902).

This decision involved the propriety of a complaint for injunction brought in the District Court of Missouri against McAnnulty, the Postmaster in charge of the United States Post Office in the city of Nevada, Missouri, without joining the Postmaster General. Homer Glen

Wilcox vs. Lt. Gen'l. John L. De Witt (1944), 144 Fed. Rep. 2d 353.

Here the action was brought in the District Court of the Southern District of California, Southern Division, against Lt. Gen'l. John L. DeWitt, United States Military Official. Esquire, Inc. vs. Walker (Postmaster General) (1944), 55 Fed. Supp. 1015.

Here again proper jurisdiction was obtained over the Postmaster General in the United States District Court.

E

The recompilation of defendant Ammann's objections to proposed findings as stated on Pages 3 and 4 are unsubstantial, dealing only with trivial technicalities for example:

(a) If we could rely upon the government's position "That the findings as to comparative assets and as to solvency are immaterial and irrelevant," (Page 3; Line 25, 26) we would probably not have too serious objections to omitting these findings, but, since the consistency of their position cannot necessarily be relied upon, and, as obviously the findings of comparative assets and as to solvency are certainly descriptive and no doubt will be of assistance to reviewing courts in understanding the true situation, we believe such findings are not
747 immaterial and certainly are not irrelevant.

(b) The unlawful taking possession of assets, property and business of this magnitude by an interloper and trespasser, who is acting without authority and has prevailed only by an expressive show of force, in our opinion might be appropriately described as a "seizure", and hence we submit the use of the objective word seizure, as reasonably descriptive of the ultimate facts found.

(c) Objection 3 on Page 4 to proposed finding No. 3, is not well taken, as proposed finding number 3 specifically states that the plaintiffs "are suing as representatives of all members of that class."

(d) We submit that proposed finding 7 is not contrary to fact, so it is not in dispute that Order No. 5254 was actually issued by John H. Fahey or his subordinates of the said Federal Home Loan Bank Administration.

The proposed findings endeavor to state ultimate facts

as distinguished from evidentiary facts, and as Mr. John H. Fahey has through his counsel, Mr. Moe Silverman, appeared specially in the matter, and has filed a motion seeking to have this Court quash the service upon him, which motion this court has never granted, it would appear that the ultimate fact is in conformance with the proposed finding number 8, to the effect that John H. Fahey has been served with process.

F

Defendant Ammann's proposed findings as set forth on Pages 5 to 10 inclusive, are essentially evidentiary in their content, and are neither material nor relevant to the issue of constitutionality. The rules and regulations therein set forth and proposed to be introduced as findings by the defendant Ammann are void and so declared in the opinion of this court, holding Section 5 (d) of the Home Owners Loan Act of 1933, as amended, is unconstitutional and hence any regulations, irrespective of the language
748 contained in them, are void ab initio, as they draw their authority, if any, from that section of the act, herein declared to be unconstitutional.

The plaintiffs herein, constituting a shareholder committee, suing for, and on behalf of, and as representatives of shareholder members of the Long Beach Federal Savings and Loan Association, respectfully submit, that as they have never signed any of the original applications for charter of such association, they cannot be bound thereby. Nor have they ever consented to any of the void rules and regulations submitted by the defendant Ammann. Therefore, as to these plaintiffs, the proposed void rules and regulations are not material or relevant in these proposed findings of fact and conclusions of law.

G

(a) Defendant Ammann's objection Number 1 on Page 10 to the proposed conclusion Number 1, would, in effect, require that this Honorable Court limit its decree of unconstitutionality, of the said Section 5 (d), to the single ground suggested by the defendants. But we do not understand the opinion, of this Honorable Court, to so limit its finding of unconstitutionality.

(b) Defendant Ammann's objection to 2 and 3 on Pages 11 to proposed conclusions 3, 4, 5 and 6 are not well taken, as the conclusions are founded upon findings of fact, which are based upon the numerous affidavits heretofore filed to which no contravening affidavits have been filed, and therefore said affidavits should be taken as correct.

It is respectfully submitted that the findings of fact, as proposed by the plaintiffs are sufficiently broad to, and do support the proposed conclusions of law.

(c) When the defendant Ammann claimed that the proposed decree would be premature, he overlooked the obvious fact that Section 5 (d) of the Home Owners Loan Act was obviously unconstitutional "upon its face," and hence that no additional pleadings can in any way alter or change the unconstitutionality of said Section, nor aid this Honorable Court in discerning the law as to unconstitutionality of said Section. To delay the ultimate decision of this matter as suggested by the defendant Ammann, could serve no useful purpose, and would be contrary to the requirement of Rule 1 of the Rules of Civil Procedure "to secure the just, speedy and inexpensive determination of every action."

749

H

Answer to defendant Ammann's Points and Authorities—Point I

The contention is made by defendant Ammann that "the court is without authority at this time to make final findings of facts, conclusions of law and final decree." In support of this contention three cases are cited: Mayo et al. v. Lakeland Highland Canning Co. et al., 309 U.S. 310.

This case is distinguishable from the instant case on the following grounds:

1. It appears that the act there was not unconstitutional on its face. In fact the act was ultimately declared unconstitutional and in the dissenting opinion of Justice Frankfurter concurred in by Justices Black and Douglas, the statement is made: "Inasmuch as the Florida statute is *obviously* constitutional, the bill does not raise a substantial federal question and the District Court was without jurisdiction to entertain it on behalf of the appellees who are citizens of Florida." (Page 322).

The question there was not essentially one of unconstitutionality of the act itself, but rather was essentially concerned with the question of unconstitutionality of
750 acts and operations being had under color of the authority of the Florida law, and hence ultimate disposition of the case was primarily determinable by issues of fact as to methods of operation and performance under color of the act, and was not solely determinable by the issue of law, as to the constitutionality of the enactment itself.

In the instant question of unconstitutionality of Section 5 (d) of the Home Owners Loan Act of 1933, in the instant case the determination of unconstitutionality of this Section, which has already been declared by this Honorable Court's opinion coupled with the declaration of this Honorable Court in its opinion that whatever authority the commissioner and his subordinates had of necessity must have been "bottomed" upon the declared unconstitutional subdivision of the act, is determinative of all the numerous claims of the plaintiffs and of other parties.

In the instant case the instant question is one purely of law.

In the instant case, the question of unconstitutionality is one purely of law, the existence of the act being undisputed, and as the unconstitutionality of the act being apparent on its face, this issue would be totally unaffected by any further pleadings or evidence. To pass on the same issue again after answer would add nothing to the ability of the court to discern the law and to delay final decision would serve only the cause of red tape and delay and permit further irreparable damage and impairment of capital.

2. Further the court in the Mayo case suggests that the result might have been different had unequivocal findings in support of the conclusion against the constitutionality of the act there in question been made. (Page 318.)

3. In the Mayo case there were not, in the proper sense, any findings of fact upon the vital issues. (Page 316.)

4. Statements of fact in the Mayo case were made without sufficient basis either in the affidavits or in the oral testimony. (Page 316.)

751 5. In the case at bar unlike the Mayo case supra, there was here a motion to dismiss. The Supreme

Court in the Mayo case held (Pages 317-318) that sufficiency of the bill to raise the constitutional question could have been decided on a motion to dismiss. Public Service Commission of Wisconsin v. Wisconsin Telephone Co., 289 U. S. 67.

It is distinguishable as it was reversed and sent back to the lower court for findings of fact, which were missing in the original order.

In Cone et al., v. Rorick, et al.; 112 Fed. (2d) 894, the court granted a preliminary injunction and the defendant appealed the matter—case was affirmed. It is, therefore, difficult to understand why the case has been cited by the defendant Ammann.

I

In reply to defendant Ammann's contention; "that the defendant is entitled to file an answer and have the issues thereon determined before a final decree," we submit that it having been decided by this Honorable Court in its opinion that—

1. "This three judge statutory court has jurisdiction to herein determine the matters presented, and

2. The authority of the conservator to do the acts sought to be restrained, if found to exist, must be bottomed on Sub-section (d) of Section 5 of the Federal Home Loan Act, as amended. It is on the direct operation of this statute that the commissioner must rely, and

3. We hold Section 5 (d) of Home Owners Loan Act of 1933, as amended, unconstitutional and void as
752 attempting to delegate legislative power to the Federal Home Loan Bank Board, created under the Federal Home Loan Bank Act."

"There has been a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence, which is the subject matter of the claim."

Therefore, this Honorable court may enter a judgment disposing of the matter and "the relief to which the party in whose favor it is rendered is entitled." All pursuant to the provisions of Rule 54 of the Rules of Civil Procedure.

VI

The provisions of Section 792, Title 28 of the Judicial Code, which prohibit a single judge of the District Court in matters which require the action of three judges, from hearing and determining or from entering "a summary or final judgment" on all or any part of the action, indicate that the entry of such summary or final judgment may be made by appropriate action of the three judges of such a statutory court.

Since the provisions of Section 792 of Title 28 of the U. S. C. A. prohibits a one judge district court from hearing and determining any application for, or vacation of, an interlocutory injunction or from dismissing the action, or from entering a summary or final judgment on all, or any part of the action where an injunction is required to restrain action under an unconstitutional act, it appears that such jurisdiction to enter "a summary" or final judgment on all, or any part of the acts is vested in this Honorable three judge statutory court. In the case of Coca Cola Co. v. Los Angeles Brewery Co., 1 Federal Rules Decisions, 67 (1939).

753 In the granting of a preliminary injunction to restrain the commercial use of the term coke in the manufacture, sale, or marketing by the defendant of a beverage under that name, which injunction was later made permanent, the Honorable Paul McCormick of the Southern District of California, Central Division stated: "What is there here that can be modified or changed or that needs any further exploration? What factual situation is there that could be more definitely presented to the Court in January than today? I think there is nothing. There may be many more affidavits filed on each side of the question. There may be a great deal of oral testimony developed on both sides of the issue. There may be extensive arguments made as to the effect of those matters, but upon analysis the same issue will be presented. If that is the case, it should be determined summarily."

VII

Having acquired jurisdiction for the purpose of preventing waste and the destruction of the estate, a court

of equity will retain jurisdiction for the purpose of granting full relief. In the case of Allegheny Oil Co. v. Snyder, et al., 106 Fed. Reporter 764 (1900), involving the destruction of two oil leases upon the same property where there were cross suits between the two lessees, which were heard together by a Federal Court upon motion for preliminary injunction and there were also the involved rights of the parties defendant on the validity and construction of the first lease, the lower court having granted the injunction and the matter having been appealed to the Circuit Court, Judge Day in rendering the opinion stated:

"The equitable estate of appellees was in danger
754 of destruction by the removal of gas and oil. In such case equity will intervene to prevent irreparable injuries. Having acquired jurisdiction for the purpose of preventing waste and the destruction of the estate, the court of equity will retain jurisdiction for the purpose of granting full relief." Pomeroy Equity Jurisprudence, 237, 1399. Bettmann v. Harness, 42 W. Va. 433, 26 S. E. 271.

"It is urged by counsel for appellant that the Circuit Court erred in disposing of the cases on their merits and entering final decrees therein without taking proof in due course, under the equity rules. The case came on for hearing on the application of the oil company for a temporary injunction, granting or refusal of which necessarily involved continuing the injunction granted in the state court as well as the cross application of the oil company for an injunction. The court considered these cases together. The cases stood upon bill, answer and affidavits. In view of the construction given the Snyder lease in the circuit court, affirmed in this court, the holders thereof were entitled to have their rights protected, and interference therewith by holders of the second lease enjoined. The first lease being held valid, the attempted second lease must necessarily fail. There was nothing in the Allegheny Oil Company in the one case, or its answer in the other, which required further
755 testimony before construction and effect could be given to the first lease. As was said by Judge Thompson in the circuit court the facts were substantially undisputed. The allegations made that Fowler under-

stood the premises were to be promptly drilled for oil and gas could not affect the agreement as reduced to writing, in the absence of allegations of fraud or mistake. There was no attempt to reform the instrument. No amendment to the bill or answer was proposed, nor has there been any suggestion of further facts material to the controversy. In such cases the courts of the United States may proceed to administer final relief without putting the parties to the expense and delay of protracted litigation." (Citing numerous cases.)

Judgment affirmed.

A petition for a writ of certiorari to the United States Court of Appeals for the 6th Circuit was denied April 22, 1901. 45 L. Ed. 1030, 181 U. S. 618.

Although this case has been cited in most jurisdictions and upon numerous occasions the proposition of law herein enunciated by this case has never been questioned or modified.

What issue determinative of this litigation could be raised by further pleadings? None has been suggested.

What fact could justify this unlawful seizure under an unconstitutional act? None has been suggested.

What useful purpose would be served by further pleadings continuing the defendants trespassers in their unlawful possession? None.

756 SUMMARY

It is respectfully submitted that the proposed findings of fact, Conclusions of Law and Decree submitted by the plaintiffs, approved by all defendants, excepting only the Governmental officials as to the form thereof, put into form for the entry of final judgment the essential elements contained in the opinion of this Honorable three-judge statutory court and constitute the appropriate judgment to be entered in conformance with the instructions contained in its opinion:

"Let judgment be entered in accordance with this opinion."

Dated: At Los Angeles, this 20th day of September, 1946.

Respectfully submitted.

WESTOVER & SMITH.
By Wyckoff Westover,
WYCKOFF WESTOVER.

757 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail of plaintiffs' response to defendants Fahey and Ammann's objections to the proposed findings, conclusions of law, and decree and points and authorities in support of said response

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Fay V. Dealey, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 215 West Sixth Street, Los Angeles 14, California; That on the 20th day of September, 1946, affiant served Plaintiffs' Response to Defendants Fahey and Ammann's Objections to the Proposed Findings, Conclusions of Law and Decree, and Points and Authorities in Support of said Response on the said defendants in said action, by placing a true copy thereof in an envelope addressed as follows:

758 Federal Home Loan Bank of Los Angeles, c/o O'Melveny & Myers, its attorneys, Los Angeles, California.

Long Beach Federal Savings and Loan Association, c/o Charles K. Chapman, its attorney, Ocean Center Building, Long Beach 2, California.

Robert H. Wallis, c/o Raymond Tremaine, his attorney, Room 1007 Van Nuys Bldg., 210 West 7th Street, Los Angeles, California.

Title Service Company, c/o Thomas & Wallace, its attorney, Attn: Mr. H. O. Wallace, 602 Jergins Trust Bldg., Long Beach California.

John H. Fahey, Individually, and as Federal Home Loan Bank Commissioner, and A. V. Ammann, individually, and as purported Conservator of the Long Beach Federal Savings and Loan Association, c/o James M. Carter, United States Attorney, Attn: Ronald Walker, Assistant United States Attorney, 600 Federal Building, Los Angeles, California.

And then by sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

Fay V. Dealey.
FAY V. DEALEAY.

Subscribed and sworn to before me this 20th day of September, 1946.

[SEAL] Maxine Laurel Berweiler,
MAXINE LAUREL BERWEILER,
Notary Public in and for said County and State.

My commission expires Jan. 10, 1950.

759 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Answer of defendant and cross-claimant Title Service Company to objections of defendant A. V. Ammann to proposed findings, conclusions of law, and decree

Filed Sept. 21, 1946

Comes now Title Service Company, a defendant and cross-claimant in the above styled action, and herewith answers the Objections of Defendant A. V. Ammann to Proposed Findings, Conclusions of Law and Decree.

It is deemed necessary by this defendant to urge the settling of the proposed Findings of Fact, Conclusions of Law and Decree in the form submitted by the plaintiffs by reason of the interests of the some 8000 makers of promissory notes and trust deeds securing the same, all affecting real property within the jurisdiction of this Court which interests are adversely affected by the pendency of this proceeding, and the titles to which may only be cleared by an ultimate disposition of the action. As recited in the Affidavits of Ethel L. Roberts and H. O. Wallace in support of a motion to be allowed to file a supplemental

cross-claim in interpleader, there are more than 150
760 individual instances pending wherein the promissors and makers of deeds of trust are endeavoring to obtain reconveyances of said trust deeds and cannot do so during the pendency of this litigation.

I

It is the position and belief of this defendant and cross-claimant that all of the first eighteen objections interposed are specious. It is admitted that the proposed findings, conclusions and decree will dispose of all issues raised in the action. If such had not been the ultimate intention of Congress, there is no reason why Section 380(a) of Title 28, U.S.C. would have been placed in the statute, requiring an adjudication of constitutionality by a statutory court. It is further conceded that the order was made by the Court that its consideration would be limited to the constitutionality of the act in question. Such being the case, and the Court having found that the sole powers of the Commissioner or Administrator were "bottomed" on a statute which the Court found to be unconstitutional and void, all acts done pursuant to the power contained in the void statute become ultra vires, and whether right or wrong, are not subject to a judicial review. As was so aptly pointed out by the Supreme Court in the Panama Refining Case, heretofore cited at length, and argued, the fact that regulations adopted and acts done might have been with the best of intentions and without any ulterior motives does not validate any of them if the statute under which they were purportedly adopted and done is not constitutional.

"As to the fact that the motions to dismiss were not considered or that the defendant John H. Fahey was not before the Court, and the Court did not have jurisdiction of him, personally, we cannot agree. The action was brought under Section 118 of Title 28, U.S.C., and under that statute the Court has the power to make a binding judgment, in rem, against a non-resident and non-
appearing defendant after service upon him in the
761 prescribed manner, which has been done in this matter. That no prejudice can result is evident from the fact that John H. Fahey is not only fully in-

formed of the pendency and status of the action but that he is actively participating therein from the appearance, allegedly specially, for him of the U. S. Attorney and his Assistants and Moe Silverman, of the Nebraska Bar, and the filing on his behalf of motions to dismiss and to quash the service of summons upon him. Further, it is not conceded or believed that John H. Fahey is either a necessary or an indispensable party to the litigation.

II

With reference to the objections directed to the proposed Findings of Fact, it is believed that the arguments adduced are also very largely specious. Although it may be admitted that the Long Beach Federal Savings and Loan Association was organized under "regulations" issued pursuant to the Home Owner's Loan Act of 1933 and not under the Federal Home Loan Bank Act, as amended, the error is one of terminology and reference to the same by Statute and page would eliminate any ambiguity. Whether or not the appointment of a purported Conservator amounted to a "seizure" is a question of fact and it is believed that the affidavits on file support the finding that it did amount to a "seizure". None of the other objections are deemed worthy of comment.

III

All of the objections stated in pages 5 to 10 of the Objections and the proposed additional Findings of Fact suggested apparently go to the point of raising an estoppel against the plaintiffs of their right to sue and of the right of the defendant Long Beach Federal Savings and Loan Association to appear and be heard in this Court. Research by counsel undersigned has failed to disclose any prohibition, either statutory or by judicial precedent, for the position that any person, firm or corporation is ever estopped to challenge the constitutionality of any legislative enactment sought to be used as a basis for arbitrary deprivation of rights guaranteed by the Constitution.

As to whether the objection that Proposed Conclusion is contrary to the opinion of the Court is for the Court

to decide, although it is believed, and strongly urged that the facts adduced by affidavit do disclose violations of Amendments IV and V of the Constitution of the United States. It is believed that the arguments with reference to Proposed Findings 2, 3, 4 and 5 are repetitions and that the same have heretofore been covered herein. If, as to Nos. 3, 4, 5 and 6, the statute in question is unconstitutional and void, certainly the acts done under the power sought to be given by it are also void and of no effect and the equity arm of this Court must be extended to curtail the continuing damage being done to the innocent holders of deeds of trust under which this defendant is the trustee and the defendant Association is the beneficiary, i.e. by restoring the officers and directors to the control of their association, forthwith. As a result of conferences between counsel undersigned, other counsel in this action and some of the officers of the Title Insurance and Trust Company, including its Chief Counsel, it is believed that a procedure has been worked out by which guaranteed titles may be obtained following the restoration of the Association to the control of its officers and directors.

Finally, as to the objections raised in point 4 on page 11, to the effect that the entry of a final decree would cut off the right of the defendant Ammann to answer and be heard on the merits, the question is posed:

"What rights can one have to act or defend his acts done under a void and unconstitutional statute?"

The obvious answer is that there are none. If the act under which the defendant Ammann claims his right of appointment and on which he seeks to sustain acts done by him is void, the appointive power is likewise void
763 and he has no rights. Such being the case any further hearing in this matter has, of necessity, become moot. It is respectfully submitted that nothing which could be raised by answer, or other pleading, could or would restore life to the statute which has been declared to be void, and that to allow further pleadings to be filed on behalf of the defendant Ammann could only result in further and useless delay.

In view of all of the foregoing, it is respectfully submitted that the objections are substantially without merit and that the Proposed Findings of Fact, are adequately

supported by the facts before the Court in affidavit form, there being no question raised but that the Conservator was appointed under the claimed authority of regulations promulgated under the section of the statute held to be unconstitutional; that the Conclusions of Law properly flow from the facts so found; and that the Findings of Fact and Conclusions of Law fully support the Decree. Therefore, this defendant believes that said documents, as submitted with possible clerical corrections, should be settled, signed and the decree based thereon entered. Although the time within which this document has had to be prepared has been entirely too short, it is believed that substantially all relevant points have been covered.

Respectfully submitted.

THOMAS AND WALLACE,
By H. O. WALLACE,
Attorneys for Defendant and Cross-Claimant Title Service Company.

764 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail of answer of defendant and cross-claimant Title Service Company to objections of defendant A. V. Ammann to proposed findings, conclusions of law, and decree

STATE OF CALIFORNIA,
County of Los Angeles, ss:

George M. Washington, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 215 West Sixth Street, Los Angeles 14, California; that on the 20th day of September, 1946, affiant served Answer of Defendant and Cross Claimant Title Service Company to Objections of Defendant A. V. Ammann to proposed findings, conclusions of Law and Decree on said defendants in said action, by placing a true copy thereof in an envelope addressed as follows: John H. Fahey,

individually, and as Federal Home Loan Bank
765 Commissioner; and A. V. Ammann, individually, and as purported Conservator of the Long Beach, Federal Savings and Loan Association, c/o James M. Carter, United States Attorney, Attn: Ronald Walker, Assistant United States Attorney, 600 Federal Building, Los Angeles, California, Federal Home Loan Bank of Los Angeles, c/o O'Melveny & Myers, 900 Title Insurance Building, Los Angeles, California, and then by sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is delivery service by United States mail at the places so addressed and there is a regular communication by mail between place of mailing and the place so addressed.

GEORGE M. WASHINGTON

Subscribed and sworn to before me this 20th day of September 1945.

[SEAL] MAXINE LAUREL BERWEILER,
Notary Public in and for said County and State.

My commission expires Jan. 10, 1950.

766 (AFFIDAVIT OF SERVICE BY MAIL—1013a, C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

H. O. Wallace, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 602 Jergins Trust Bldg., Long Beach 2, California. That on the 20th day of September, A.D., 1946, affiant served the within Documents on the Defendant John H. Fahey, Etc. in said action, by placing a true copy thereof in envelopes addressed to said defendant and the Attorney General at the business address of said defendant, as follows:[1] John H. Fahey, John H. Fahey, Federal Home Loan Bank Commissioner, 101 Indiana Ave., Washington, D. C.; and Attorney General of the United States, Justice Department, Washington, D. C.; and by then sealing said envelopes and depositing the same, with postage thereon fully pre-

[1] Here quote from envelope name and address of addressee.

paid, in the United States Post Office at Long Beach, California. That there is delivery service by United States mail at the place so addressed and that there is a regular communication by mail between the place of mailing and the place so addressed.

H. O. Wallace,
H. O. Wallace.

Subscribed and sworn to before me this 20th day of September 1946.

[SEAL] Bertha Cumpton,
Notary Public in and for said County and State.

767 Received copy of the within document this 20th day of September 1946.

Charles K. Chapman,
Attorney for Def. Long Beach Federal Savings and Loan Association.

Received copy of the within document this 20th day of September 1946.

Westover and Smith,
By Wyckoff Westover,
Attorneys for Plaintiffs.

Received copy of the within document this 20th day of September 1946.

Raymond Tremaine,
Raymond Tremaine,
Attorney for Defendant Robert H. Wallis.

Received copy of the within instrument this 20th day of September 1946.

James M. Carter,
U. S. Attorney,
Ronald Walker, and
Mildred Kluckhohn,
Ass't U. S. Attorneys,
Moe Silverman,
By .....
Attorneys for John H. Fahey and A. V. Ammann, Defendants.

Received copy of the within document this 20th day of September 1946.

O'Melveny and Myers,
By .....
Attorneys for Federal Home Loan Bank of Los Angeles, Third Party Defendant.

768 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Answer of defendant Long Beach Federal Savings and Loan Ass'n to objections to proposed findings, conclusions of law, and decree

Filed Sept. 21, 1946

Comes now the defendant and cross-claimant Long Beach Federal Savings and Loan Association and for answer to the objections of the defendant A. V. Ammann of the proposed Findings of Fact, Conclusions of Law and Decree, respectfully shows to the Court as follows:

Defendant Ammann enumerates eighteen specific objections to the Court making any findings, conclusion or decree whatsoever. The conclusive and decisive point in the entire matter is the act having been found unconstitutional, what more needs to be determined? Defendants, by the wildest stretch of their imagination, can make no pretense of any right to remain in possession of the remnants of the original $26,000,000.00 in assets which they seized from the defendant Long Beach Federal. If they have any rights whatsoever, those rights must originate and stem from the Home Owners Loan

769 Act or the regulations which the Court has already determined to be unconstitutional. The defendant's insistence on remaining in possession of property the Court has adjudged they obtained wrongfully does them little credit. Particularly in view of their record of administration of such property. Under the management which defendant Ammann ousted, the property grew from $7500.00 to $26,000,000.00 in twelve years. Under the administration of Ammann, it shrank from $26,000,000.00 to $16,000,000.00 (approximately forty per cent) in less than four months. If this same rate of depletion continues, in a very few months more, the defendants will have achieved their purpose and destroyed the association, under no other authority than a law declared unconstitutional by this Court.

The circumstances under which defendant Ammann obtained his wrongful possession of this association and

its assets must never be obscured in the "fog" of legal technicalities raised by him in his attempts to justify his seizure. Acting under a law, now adjudged unconstitutional with no authority other than his own signature, by intimidation and threats of criminal prosecution, he physically ousted the rightful management from control of $26,000,000.00 of assets belonging to the citizens of Long Beach. Under his administration, these assets have shrunk $10,000,000.00, nearly 40% and now he seeks by every subterfuge and delay to prolong said administration until the final destruction and dissolution of the defendant association. He has succeeded in half strangling it. The question remaining is will a court of equity allow him, whom the court has adjudged without authority in law, to continue choking the association until it is completely destroyed?

The case of Mayo v. Lakeland, etc., 84 L. Ed. 775, 309 U. S. 310, cited by defendant Ammann, in his Points and Authorities, presents an entirely different situation than the present case. There, the question of unconstitu-
770 tionality depended upon involved factual matters, upon which the Court made no findings whatsoever. Here, the constitutional question is to be decided solely from the law itself.

This Honorable Three Judge Court excluded oral testimony and passed solely upon the law. If this Court were to grant only a temporary injunction, the Mayo case might have some application. But upon determining the question of law without recourse to any factual matters, the Court can grant a permanent injunction thereon. In the Mayo case, all parties conceded the necessity of a further hearing and lengthy trial. One of the most serious questions there involved was whether or not the defendants were complying with the law and the constitutionality of the law depended greatly upon such compliance or non-compliance. In the present case we have a pure question of law unmixed with any facts whatsoever. That is the power of Congress to delegate to the Board or the Commissioner the power to make laws of the United States. This question cannot be affected by any factual situation whatsoever. Either the delegation was valid or it was unconstitutional. This

Court has held it to be unconstitutional, not upon any factual matters but solely upon consideration of the law itself. Such determination so made carries with it the necessity of the permanent injunction and the restoration of possession. Adequate findings have been presented to the Court and we feel sure will be adopted by the Court. The turning point of this matter is what facts, answer or allegations can change or affect the invalid attempt of Congress to delegate to the Commissioner and the Board the power to make the laws of the United States. The answer to this is the basis for the Court making the final judgment at this time. No more light can be thrown on this question by trial or any other facts. *The law must stand or fall by what is contained in it and this Court has already determined that it falls.*

The real question now before the Court is the life or death of the Long Beach Federal. If restored to
771 its rightful management, it will, despite the damage it has suffered from the wrongs inflicted by the defendants Ammann and Fahey, start its gradual recovery and growth. If permitted to remain in their "tender care" its death and dissolution is inevitable and immediate. If defendants Fahey and Ammann have anything to present in the way of a meritorious defense there has nothing prevented them from presenting it to this Court during the months the action has been pending. The factual situation demanding, indeed almost compelling, the restoration of possession to the rightful management needs no further elaboration. The only remaining question is, does the Honorable Three Judge Court have the power, upon hearing motions for preliminary injunctions to issue a decree deciding not the entire case, but all questions affected by and stemming from the unconstitutionality of the act. This question can best be answered by inquiring what the defendants Ammann and Fahey can put in their answer that would make constitutional an unconstitutional law. Assume for a moment, that defendants Ammann and Fahey appeal from the adjudication of unconstitutionality, and such adjudication is sustained (as we are convinced it surely will be) and the case then returned to the Three Judge Court for further proceedings, what further proceedings

can be taken on the question of constitutionality? The answer of course is none.

Courts of equity have faced similar problems in other cases and have not found themselves without power to effect a complete remedy.

In the case of Allegheny Oil Co. v. Snyder et al., 106 Fed. 764, the action was decided and a final judgment entered by the Trial Court upon applications for temporary injunctions. An appeal was taken in the Circuit Court of Appeals, among other things; on the ground that the trial court erred in disposing of the cases on their merits without a trial. This contention was overruled and the trial court judgment affirmed, in the following language:

772 Where cross-suits between two lessees of the same property were heard together by a federal court upon motions for preliminary injunctions, submitted on bill, answer, and affidavits in each case, and the rights of the parties depended solely on the validity and construction of the first lease, the facts being substantially undisputed, the court had power to enter final decree on such hearing.

"It is urged by counsel for appellant that the circuit court erred in disposing of the cases on their merits, and entering final decrees therein without taking proofs in due course under the equity rules. The cases came on for hearing on the application of the oil company for a temporary injunction, the granting or refusal of which necessarily involved the continuing of the injunction granted in the state court, as well as the cross application of the oil company for an injunction. The court considered these cases together. The cases stand upon bill, answer, and affidavits. In view of the construction given the Snyder lease in the circuit court, affirmed in this court, the holders thereof were entitled to have their rights protected, and interference therewith by holders of the second lease enjoined. The first lease being held valid, the attempted second lease must necessarily fail. There was nothing in the bill of the Alleghany Oil Company in the one case, or its answer in the other, which required further testimony before construction and effect could
773 be given to the first lease. As was said by Judge Thompson in the circuit court, the facts were sub-

stantially undisputed. The allegation made that Fowler understood the premises were to be promptly drilled for oil and gas could not affect the agreement as reduced to writing, in the absence of allegations of fraud or mistake. There was no attempt to reform the instrument. No amendment to the bill or answer was proposed, nor has there been any suggestion of further facts material to the controversy. In such cases the courts of the United States may proceed to administer final relief without putting the parties to the expense and delay of protracted litigation. Mast, Foos & Co. v. Stover Mfg. Co., 177 U. S. 485, 20 Sup. Ct. 708, 44 L. Ed. 856, citing, with approval, Gardt v. Brown, 113 Ill. 475; Green v. Mills, 16 C.C.A. 516, 69 Fed. 852, 25 U. S. App. 383; and the decision of this court in Mayor etc., of Knoxville v. Africa, 23 C.C.A. 252, 77 Fed. 501, 47 U. S. App. 74. Finding no error in the decrees entered in the court below, the same will be affirmed."

The United States Supreme Court refused to grant certiorari to review this judgment, such refusal being contained in 45 L. Ed. 1930; 181 U. S. 618 (1901) Case No. 617.

As so aptly said "Nor has there been any suggestion of further facts material to the controversy. In such cases the courts of the United States may proceed to administer final relief without putting the parties to the expense and delay of protracted litigation." While defendant Ammann has vehemently insisted to the Court that he wants to raise defenses in his answer for
774 reasons of his own, he has completely failed to specify the nature of any of such defenses.

Our own District Court for the Southern District of California, has in the case of Coca Cola Co. v. Los Angeles Brewing Co., 1 Federal Rules Decisions, page 67, wherein Judge McCormick presented with a similar situation, granted a permanent injunction finally disposing of the entire case upon the application for a temporary injunction, used the following language:

"(1) The court believes that these matters are admittedly in the sound discretion of the court, to be exercised judicially and not arbitrarily. There is, however, a fixed principle in patent law and I dare say it is appli-

cable in trade-mark litigation as well. It has been applied in many cases by this court. It operates where there isn't anything to be gained by prolonging litigation except to afford one or the other of the litigants a respite and moratorium to suspend the enforcement of right; but that is no safe criterion in determining the course that the court should follow on an application for a preliminary injunction. It usually applies in patent litigation where there has been a prior adjudication validating a patent and the only question at issue is one of infringement. There the situation can be arrived at generally, except in so far as the question of infringement is concerned, just as securely and much more satisfactorily on the preliminary application as it can by a trial after
775 a long hearing, expensive both as to time and as to money.

(2) What is there here that can be modified or changed or that needs any further exploration? What factual situation is there that could be any more definitely presented to the court in January than today? I think there is nothing. There may be many more affidavits filed on each side of the question. There may be a great deal of oral testimony developed on both sides of the issue. There may be extensive arguments made as to the effect of those matters but, upon analysis, the same issue will be presented. If that is the case, it should be determined summarily.

(5) * * * It seems to me that in the interests of both sides of the case it should be decided now. * * * An injunction will issue accordingly restraining the use or sale or advertisement of a beverage of this type or any beverage for human consumption using the word 'coke'."

As Judge McCormick so aptly said, "What is there here that can be modified or changed or that needs any further exploration? What factual situation is there that could be any more definitely presented to the Court in January than today? * * * Upon analysis, the same issues will be presented. If that is the case it should be determined summarily."

In addition, the Federal Rules of Civil Procedure, Rule No. 54, reads in part as follows:

"(a) Definition; Form. 'Judgment' as used in these

rules includes a decree and any order from which
776 an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

"(b) Judgment at various stages. When more than one claim for relief is presented in an action, the Court at any stage, upon a determination of the issues material to a particular claim and all counter claims arising out of the transaction or occurrence which is the subject matter of the claim, may enter judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered."

This language is particularly significant: "In case a separate judgment is so entered the court * * * may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.' Judgment is defined as including "any order from which an appeal lies". In addition therefore to the inherent equity powers of the court, it has authority under the Federal Rules to do exactly what has been proposed in the findings and judgment submitted to it. The determination of unconstitutionality will be of no benefit to plaintiffs or to defendant Long Beach Federal if the wrong doer and trespasser Ammann be allowed to remain in possession until he succeeds in completing
777 the destruction of the association already 40% destroyed in four months. Both plaintiffs Complaint and defendant Long Beach Federal's cross-claim present numerous claims for relief among them accounting, quiet title, preliminary and permanent injunctions, etc. The Court is now at the stage of having completely determined all issues material to constitutionality of the act and should grant all relief connected therewith, reserving jurisdiction as to the approval of the accountings when rendered, damages and such phases of the case as do not involve or flow from the determination of uncon-

stitutionality, but to determine the act unconstitutional and yet to leave the trespasser Ammann in possession until the association be destroyed is to deny and not to secure the "benefits to the party in whose favor judgment is entered".

Respectfully submitted.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant Long Beach Federal Savings and Loan Association.

We join in and concur in the above Answer of Defendant Long Beach Federal Savings and Loan Association to the Objections to Proposed Findings, Conclusions of Law and Decree of the defendant A. V. Ammann, and respectfully urge the immediate filing of the Findings, Conclusions of Law and Decree, as proposed by the Plaintiff.

Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for Defendant and Cross-Claimant in Interpleader Robert H. Wallis.

778 In the District Court of the United States

Affidavit of service by mail of answer of defendant Long Beach Federal Savings and Loan Ass'n to objections to proposed findings, conclusions of law, and decree

STATE OF CALIFORNIA,
County of Los Angeles, ss:

George M Washington, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 215 West Sixth Street, Los Angeles 14, California; that on the 20th day of September, 1946, affiant served the Answer of Defendant Long Beach Federal Savings and Loan Association to Objections to Proposed Findings, Conclusions of Law and Decree on said defendants in said action, by placing a true copy thereof in an envelope addressed as follows: John H. Fahey, individually, and

as Federal Home Loan Bank Commissioner; and
779 A. V. Ammann, individually, and as purported Conservator of the Long Beach Federal Savings and Loan Association, c/o James M. Carter, United States Attorney, Attn: Ronald Walker, Assistant United States Attorney, 600 Federal Building, Los Angeles, California, Federal Home Loan Bank of Los Angeles, c/o O'Melveny & Myers, 900 Title Insurance Building, Los Angeles, California, and then by sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is delivery service by United States mail at the places so addressed and there is a regular communication by mail between place of mailing and the place so addressed.

GEORGE M. WASHINGTON.

Subscribed and sworn to before me this 20th day of September 1946.

[SEAL] MAXINE LAUREL BERWEILER,
Notary Public in and for said County and State.

My commission expires Jan. 10, 1950.

780 Received copy of the within document this 20th day of September 1946.

THOMAS & WALLACE,
By H. O. Wallace,
H. O. WALLACE,
Attorney for Title Service Company.

Received copy of the within document this 20th day of September 1946.

WESTOVER AND SMITH,
By WYCKOFF WESTOVER,
Attorney for Plaintiffs.

Received copy of the within document this 20th day of September 1946.

Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for Defendant Robert H. Wallis.

Received copy of the within instrument this 20th day of September 1946.

JAMES M. CARTER,
U. S. Attorney,
RONALD WALKER and
MILDRED KLUCKHOIM,
Ass't. U. S. Attorneys,
MOE SILVERMAN,
By .....
Attorneys for John H. Fahey and A. V. Ammann, Defendants.

Received copy of the within document this 20th day of September 1946.

O'MELVENY AND MYERS,
By .....
Attorneys for Federal Home Loan Bank of Los Angeles, Third Party Defendant.

781 In the District Court of the United States

[Title omitted.]

Request for stay of execution
Filed Sept. 25, 1946

Proposed findings of fact and conclusions of law and decree in the above matter having been submitted, which proposed findings, conclusions and decree provide in effect for the complete relief requested by the plaintiffs, including the removal of defendant A. V. Ammann, as conservator, and objections to said proposed findings; conclusions and decree having been filed and the settlement of such findings, conclusions and decree now being before the Court,

And it appearing that the three judge court will not be convened for a hearing upon the settlement of such proposed findings, conclusions and decree,

Request is hereby made that in the event the three judge court shall issue the decree in the form as submitted by plaintiffs or in such other form as shall provide for the immediate removal of defendant, A. V. Ammann, as conservator, or for relief other than an interlocutory injunction restraining:

1. Consolidating or merging the Long Beach Federal Savings and Loan Association, or commingling its assets

with other financial institutions, or from making any transfers, assignments, conveyances of any and all of the assets thereof to affect such merger, consolida-
782 tion or reorganization, or from uniting, commingling, joining or consolidating the securities, assets, cash, resources, property or membership shares of said Association with those of any other association, bank, corporation, organization or institution whatsoever;

2. The holding of an administrative hearing by the Federal Home Loan Bank Board or Administration pursuant to Order No. 5309 of the Federal Home Loan Bank Administration;

that a stay of execution of said decree be granted for a period of thirty (30) days or such other time as the Court may fix to permit the perfecting of an appeal to the Supreme Court of the United States and application to be made before said Supreme Court for a further stay during the pendency of such appeal.

This request is based upon the affidavit of Ronald Walker, Assistant United States Attorney, which affidavit is attached hereto marked Exhibit A.

Dated: September 19, 1946.

Respectfully submitted.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association.

783 *Exhibit "A"*

UNITED STATES OF AMERICA,
Southern District of California, ss:

Ronald Walker, being first duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of California, and one of the attorneys for the defendant, A. V. Ammann, in the above entitled action.

That in the event the order or decree of this Court shall provide for the immediate removal of defendant, A. V.

Ammann, as conservator of the Long Beach Federal Savings and Loan Association and no stay of execution as to the enforcement of such order or decree be granted, and said defendant, A. V. Ammann, be immediately removed as such conservator, and thereafter a stay order be issued by the Supreme Court of the United States, staying the execution of such decree or order pending an appeal, great confusion and damage would result, rendering another accounting necessary, and affecting seriously the supervisory operations of the Federal Home Loan Bank Administration; that great expense would result to the Federal Home Loan Bank Administration, and ultimately to the Long Beach Federal Savings and Loan Association if the decision of this Court be reversed.

That this affiant as Assistant United States Attorney and as one of the attorneys for the defendant will promptly and with the utmost dispatch do all within his power and authority to expedite an appeal to the United States Supreme Court.

That a stay herein is sought solely for the purpose of maintaining the status quo pending an application to be made for a further stay by the Supreme Court of the United States.

RONALD WALKER.

Subscribed and sworn to before me, this 19th day of September 1946.

[SEAL]

Clerk, U. S. District Court,
Southern District of California.
By THEODORE HOEKE,
Deputy.

784 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail

UNITED STATES OF AMERICA,
Southern District of California, ss:

Helen Wedge, being first duly sworn, deposes and says: That she is a citizen of the United States and a resident of Los Angeles County, California; that her business

address is 600 Post Office and Court House, Los Angeles, California; that she is over the age of eighteen years, and is not a party to the above-entitled action;

That on September 19, 19[illegible], she deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Request for Stay of Execution, addressed to: Westover & Smith, Attorneys for Plaintiffs, 1007 Pacific Southwest Building, Los Angeles 14, California; Charles K. Chapman, Attorney for defendant, Long Beach Federal Savings & Loan Assn., Ocean Center Building, Long Beach 2, California; Thomas and Wallace, Attorneys for defendant, Title Service Company, 602 Jergins Trust Building, Long Beach 2, California; Raymond Tremaine, Attorney for Defendant, Robert H. Wallis, 1007 Van Nuys Building, 210 W. 7th Street, Los Angeles 14, California;

785 O'Melveny & Myers, Attorneys for Federal Home Loan Bank of Los Angeles, 433 So. Spring Street, Los Angeles, California; Richard Fitzpatrick, Attorneys for Federal Home Loan Bank of Los Angeles, 1400 Chapman Building, Los Angeles, California; their last known address, at which place there is a delivery service by the United States Mails from said post office.

HELEN WEDGE.

Subscribed and sworn to before me, this 19th day of September 1946.

[SEAL]

_____,
Clerk, U. S. District Court,
Southern District of California.
By THEODORE HOCKE,
Deputy.

786 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Opposition to request for stay of execution
Filed Sept. 21, 1946

787 Come now, the plaintiffs, individually, and as representatives of the class of all of the shareholder members of the Long Beach Federal Savings and

Loan Association, and oppose the request of the defendant A. V. Ammann, as purported Conservator for stay of execution of the decree to be entered in the above entitled matter.

It is respectfully submitted, that this Honorable Court, having, by its opinion heretofore rendered, declared Section 5 (d) of the Federal Home Owners Loan Act of 1933, as amended, unconstitutional and having by said opinion found that the only authority, if any, of said A. V. Ammann, as purported Conservator, or otherwise, is "bottomed" upon said declared unconstitutional section of said act and that said A. V. Ammann, his employees, agents and subordinates had no authority whatsoever, and are wrongfully in possession, control and management of the said Long Beach Federal Savings and Loan Association and all of its assets and further that any, and all acts of said A. V. Ammann, in connection with said matter, are void, and, if improper, might well be set aside and so declared void, and

It is further submitted that, to permit said A. V. Ammann, his staff, agents, employees and subordinates to remain in control and possession of said association and its assets, will be to continue dissipation of said assets and destruction of said association contrary to, and in spite of this Honorable Court's decision.

In spite of the expeditious manner in which this Honorable Court has endeavored to handle the above entitled litigation, it is further submitted, that from the time the said A. V. Ammann seized the said association on May 20, 1946, claiming to be purported conservator thereof, until the time of argument to wit: on or about July 16, 1946, there occurred withdrawals by shareholder members amounting to approximately $8,000,000.00, and that from the time of submission of said motion on to wit: July 16, 1946, until September 12, 1946, there occurred further withdrawals by shareholder members amounting to nearly $1,000,000.00 additional, raising the total withdrawals to slightly under $10,000,000.00.

788 And it is further submitted that assets, documents etc., have been and are continuing to be withdrawn from the premises of said association and that the title to property of said association has been and is

continuing to be changed into the name of A. V. Ammann, a purported conservator, thereby clouding real property titles and making more difficult the handling of essential business matters, in an expeditious manner.

It is further submitted that numerous improper methods of business operations have been indulged in by the said A. V. Ammann, as purported Conservator, and his staff, agents, employees and subordinates and that such improper operations are continuing.

This Honorable Court's attention is respectfully directed to the following affidavits in support hereof, as follows, to wit: Affidavits Filed in Support of and Attached to Motion for Temporary Restraining Order in re Interference of Operations of Long Beach Federal Savings and Loan Association.

Affiant and Date of Affidavit

William C. MacArthur (Accountant), September 10, 1946.

Re: Sale of $5,000,000.00 of Bonds—Loss of Interest.

Re: $100,000.00 Bond of Ammann in favor of Fahey, not for Protection of Association, and

Re: Deposit of $7,000,000.00 of Loans as Collateral with San Francisco Federal Home Loan Bank, an Institution of doubtful validity.

G. A. Walker (President of Farmers Merchants Bank of Long Beach), September 10, 1946.

Re: Withdrawals of $1,588,000.00.

Leon Frazer (Escrow Officer Title Service Company), September 10, 1946.

Re: Mutilation of Title Documents.

789 Paul Mallonee, September 10, 1946.

Re: Complaints of Mismanagement and Discourtesy of Conservator and Staff.

Leona Hiestand (Employee, Bookkeeping Department), September 10, 1946.

Re: Permission of cash withdrawals without obtaining signature.

Clara Moore (Employee of the Bookkeeping Department), September 10, 1946.

Re: Withdrawals of Cash without obtaining signature and other improper business practices.

Frances Bond (Employee), September 10, 1946.

Re: Inefficient business practices.

O. D. Brick (U.S. Fidelity & Guaranty Co.), September 12, 1946.

Re: $200,000.00 Bond on officers and T. A. Gregory of Association.

Affidavits filed at hearing on motion Temporary Restraining Order, September 14, 1946.

S. I. Bacon, September 13, 1946.

Re: Removal on September 13, 1946, of five brief cases and various large envelopes.

William MacArthur (Accountant), September 13, 1946.

Re: Deposit of almost $5,000,000.00 in Commercial Account not drawing interest.

Answer and cross-claim on defendant Long Beach Federal Savings and Loan Association—Exhibit "A" of April 30, 1946.

790 "Statement of Condition of Long Beach Federal Savings And Loan Association showed total assets $25,943,601.57." Filed in opposition to Motion of Defendants John H. Fahey and A. V. Ammann to Dismiss or to Quash Service on Defendant John H. Fahey.

T. A. Gregory, July 10, 1946.

General Outline of organization and growth etc., of Association and of its seizure and reduction of assets by $8,000,000.00 to that date while in possession of purported Conservator.

Motion for Preliminary Injunction to Restrain the Holding of Administrative Hearing.

T. A. Gregory, June 18, 1946.

Re: Details of seizure and refusal of purported Conservator to give receipts for negotiable instruments, cash etc., Motion for permission to file supplemental cross-claim and interpleader re Trust Deeds.

H. O. Wallace, August 8, 1946.

Re: Efforts to get Government Attorneys to agree to the handling of Trust Deeds and their declining to enter into stipulation therefore.

Ethel L. Roberts (Assistant Secretary to Title Service Company), August 8, 1946.

Re: Trust Deed in Request for Reconveyances.

That all of the foregoing affidavits are by reference

expressly incorpofated herein, as though set forth herein at length.

The above opposition to defendant Ammann's request for stay of execution is made upon the grounds that
791 unless this Honorable Court promptly restores the officers of said Long Beach Federal Savings and Loan Association to its management and control and restrains and enjoins the said A. V. Ammann, his secretary, agents, employees and subordinates from so doing, they will continue through mismanagement and otherwise to dissipate and diminish the assets of the defendant Long Beach Federal Savings and Loan Association to the irreparable damage of the shareholder members thereof and will continue to destroy the public confidence in the stability of the management of this financial institution.

It is respectfully submitted that it rests within the sound discretion of this Honorable Court, as to whether or not a stay of execution of this decree should be granted. This court is in a position to judge best whether or not the balance of convenience requires the suspension of this decree and a withholding of its mandate.

As was stated by Chief Justice Taft during the opinion in the case of Magnum & Co. v. Coty, 262 U.S. 159 @ 163, 164 (1923).

"That court is in a position to judge first where the case is one likely under our practice to be taken up by us on certiorari, and second whether the balance of convenience requires a suspension of its decree and a withholding of its mandate. It involves no disrespect to this court for the Circuit Court of Appeals to refuse to withhold its mandate or to suspend the operation of its judgment or decree pending the application for certiorari to us. If it refuses, this court requires an extraordinary showing, before it grants a stay of the decree below pending
792 the application for a certiorari, and even after it has granted a certiorari, it requires a clear case and a decided balance of convenience before it will grant such stay." Cumberland Tel. Co. v. Public Service Commission, 260 U.S. 212 (1929) at 219.

In discussing the granting of a stay execution, Chief Justice Taft again states:

"But the court, which is best and most conveniently

able to exercise the nice discretion needed to determine this balance of convenience is the one which has considered the case on its merits and, therefore, is famil-ar with the record. Records in cases like this are often very voluminous. Such is the record in this case. Without abdicating our unquestioned power to grant such an application as this, and conceding that exceptional cases may arise, we are generally inclined to refer applications of this kind to the Court of three judges, who have heard the whole matter, have read the record, and can pass on the issue without additional labor."

It is therefore respectfully submitted that, in view of the record here, equity does not warrant the granting of a stay of execution, which would cause the continuation of irreparable damage and injury to the approximately 16,000 shareholder members of the Long Beach Federal Savings and Loan Association.

Dated: This 20th day of September, 1946.

Respectfully submitted.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

793 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail of opposition to request for stay of execution

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

Fay v. Dealey, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 215 West Sixth Street, Los Angeles 14, California; That on the 20th day of September, 1946, affiant served Opposition to Request for Stay of Execution on said defendants in said action, by placing a true copy thereof in an envelope addressed as follows: Long Beach

Federal Savings and Loan Association, c/o Charles K. Chapman, its attorney, Ocean Center Building, Long Beach 2, California; To Federal Home Loan Bank of Los Angeles, c/o O'Melveny and Myers, 900 Title Insurance Building, Los Angeles, California; Robert H. Wallis, c/o Raymond Tremaine, his attorney, Room 1007—Van Nuys Bldg., 210 West 7th Street, Los Angeles, California; Title Service Company, c/o Thomas & Wallace, its attorney, Attn: Mr. H. O. Wallace, 602 Jergins Trust Bldg., Long Beach, California; John H. Fahey, individually, and as Federal Home Loan Bank Commissioner, and A. V. Ammann, individually, and as purported Conservator of the Long Beach Federal Savings and Loan Association, c/o James M. Carter, United States Attorney, Attn: Ronald Walker, Assistant United States Attorney, 600 Federal Building, Los Angeles, California; and then by sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

794 Fay V. Dealey.

FAY V. DEALEY.

Subscribed and sworn to before me this 20th day of September 1946.

Maxine Laurel Berweiler,

MAXINE LAUREL BERWEILER,

Notary Public in and for said County and State.

My Commission Expires Jan. 10, 1950.

795 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Opposition of defendant Long Beach Federal Savings and Loan Association to request for stay of execution

Filed Sept. 21, 1946

Defendant Ammann has made a request for stay of execution of the judgment (if such judgment be made ousting him from possession of the assets and business

of defendant Long Beach Federal). The effect of the granting of such stay will be the destruction of said association by defendant Ammann during the pendency of the appeal. *$10,000,000.00, approximately 40% of the assets* of said association *have already been withdrawn* in the *four months* of defendant Ammann's usurpation of management. In view of this disastrous effect of such stay, it is pertinent to inquire upon which Court the duty rests of determining whether the stay shall be granted. The Supreme Court of the United States has uniformly referred such matters to the three judges or other trial courts.

In Cumberland Telephone and Telegraph Co. v. Louisiana Public Service Commission, 67 L. ed 217; 260 U. S. 212 (1922), the Supreme Court of the United 796 States, in considering an application for stay of execution, said:

"But the Court which is best and most conveniently able to exercise the nice discretion needed to determine this balance of convenience is the one which has considered the case on its merits and therefore is familiar with the record. Records in cases are often very voluminous. Such is the record in this case. Without abdicating our unquestioned power to grant such an application as this, and conceding that exceptional cases may arise, we are generally inclined to refer applications of this kind to the court of three judges who have heard the whole matter, have read the record, and can pass on the same issue without additional labor. That was the course taken by this court in Southern R. Co. v. Watts, 66 L. ed. 1071; 259 U.S. 576, U.S. Supreme Court (1922). A similar order will be made here * * *."

Therefore the stay of execution is one for the Honorable Three Judge Court to determine for itself in the first instance. Such determination should not be merely for the purpose of permitting the Supreme Court of the United States to exercise a duty resting primarily upon the Honorable Three Judge Court. Further, as is shown in the case of Magnum Import Company v. De Spoturno, etc., 67 L. ed. 922; 262 U.S. 160 (1923), the application must be made in the first instance to the trial or lower court and when determined by them (unless discretion is

abused) will not be reversed by the Supreme Court. In this case, the Court said:

"When, therefore, after the petition is filed and before its submission, an application is made for a suspension of the judgment or decree of the circuit court of appeals, a heavy burden rests on the applicant. The
797 petition should, *in the first instance*, be made to the circuit court of appeals, which, with its complete knowledge of the cases, may, with full consideration, promptly pass on it. The court is in a position to judge, first, whether the case is one likely, under our practice, to be taken up by us on certiorari; and, second, whether the balance of convenience requires a suspension of its decree and a withholding of its mandate. It involves no disrespect to this court for the circuit court of appeals to refuse to withhold its mandate or to suspend the operation of its judgment or decree pending application for certiorari to us * * *. This is a matter, however, wholly within its discretion. If it refuses, *this court requires an extra ordinary showing before it will grant a stay of the decree below*, pending the application for a certiorari, and even after it has granted a certiorari, it requires a clear case and decided balance of convenience before it will grant such stay * * *. Coming now, to the circumstances presented on the inquiry before us, we find nothing to justify our granting the motion. It is clear that the circuit court of appeals gave full consideration to a similar motion, and, with a much fuller knowledge than we can have, denied it. As we have said, *we require very cogent reasons before we will disregard the deliberate action of that court in such a matter.*" [Italics added.]

The law is thereby settled that the granting or denying of the stay of execution rests primarily with the Honorable three judge court and that the application for such must be made to them first and not initially in the Supreme Court of the United States. Further, the three judge court's determination of the matter will (unless extreme circumstances be shown) be conclusive
798 on appeal to the Supreme Court.

It is therefore respectfully urged that no stay be granted "to permit perfecting of appeal to the

Supreme Court of the United States" but that the Court consider the question of the stay fully upon its merits and determine the same.

It is further respectfully submitted that the entire record of growth of $7500.00 to $26,000,000.00 under the ousted management and of loss of $10,000,000.00 in four months under the usurpation of defendant Ammann conclusively requires the denial on the merits of the application for stay of execution.

Attached hereto and incorporated herein by reference is affidavit of T. A. Gregory, President of defendant Long Beach Federal supporting the statements herein contained as to usurpation, damage and destruction, if the stay of execution is granted.

Also attached hereto is a list of affidavits heretofore filed by plaintiffs and other parties to this action also supporting the statements as to irreparable damage.

Respectfully submitted.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant Long Beach Federal Savings and Loan Association.

799 In the District Court of the United States

[Title omitted.]

Affidavit of T. A. Gregory on opposition to stay of execution

STATE OF CALIFORNIA,
County of Los Angeles, ss:

T. A. Gregory, being first duly sworn, deposes and says: That he is the President of the defendant Long Beach Federal and has been such since the inception of said association in 1934; that the same management and Board of Directors (with one exception) have been in charge of the affairs of said defendant association, under which management its assets has grown from $7,500.00 to approximately $26,000,000.00 at the time of its seizure by defendant A. V. Ammann. That during the four months of the usurpation of management of the affairs of said association by said defendant A. V. Ammann assets of said association have shrunk approximately $10,000,000.00

(approximately 40%). That if said management be left with the said defendant A. V. Ammann and he be in control of its business and affairs during the many months necessary to perfect and decide an appeal to the Supreme
800 Court of the United States, the said association will be completely destroyed. If the rate of withdrawals of approximately two and one-half million dollars per month be continued for only eight or nine months more, all assets of said association will have disappeared and its dissolution will have been achieved by the said defendant A. V. Ammann, regardless of the adjudication of unconstitutionality of Section 5-D of the H.O.L.C. Act. That if, on the contrary, the duly elected and rightful management of said association be restored to control of its affairs, they can set about the work of restoration of public confidence and commence to rebuild the $10,000,000.00 damage done to said association by the usurpation of the defendants Ammann, et al. That if restoration of possession be denied, or if a stay of execution allow defendants Ammann, et al. to remain in possession, the winning of the decision of unconstitutionality will have been an empty and fruitless victory.

As defendants claim to be acting in the guise of officers of the United States, no bond can be required upon the appeal and no recourse had for the enormous and irreparable damage resulting from the destruction of said association by said defendants.

Affiant respectfully prays that possession, control and management of the affairs of the defendant Long Beach Federal be restored and that defendants A[redacted]nn, et al., who obtained such possession by intimidation and coercion under law declared unconstitutional be removed from possession they thus obtained.

Further affiant sayeth not.

T. A. Gregory.

T. A. GREGORY.

Subscribed and sworn to before me this 20th day of September 1946.

[SEAL] BERTHA E. CUMPTON,
Notary Public in and for the County of Los Angeles, State of California.

801 *List of affidavits supporting the statements as to irreparable damage.*

Affiant and Date of Affidavit

Affidavits filed in support of and attached to Motion for Temporary Restraining Order in re Interference of Operations of Long Beach Federal Savings and Loan Association.

William C. MacArthur (Accountant), September 10, 1946.

Re: Sale of $5,000,000.00 of Bonds—Loss of Interest

Re: $100,000.00 Bond of Ammann in favor of Fahey, not for Protection of Association, and

Re: Deposit of $7,000,000.00 of Loans as collateral with San Francisco Federal Home Loan Bank, an Institution of doubtful validity.

G. A. Walker (President of Farmers Merchants Bank of Long Beach), September 10, 1946.

Re: Lump sum withdrawals of $1,588,000.00

Leon Frazer (Escrow Officer Title Service Company), September 10, 1946.

Re: Mutilation of Title Documents.

Paul Mallonee, September 10, 1946.

Re: Complaints of Mismanagement and Discourtesy of Conservator and Staff.

Leonia Hiestand (Employee, Bookkeeping Department), September 10, 1946.

Re: Permission of cash withdrawals without obtaining signature.

802 Clare Moore (Employee of the Bookkeeping Department), September 10, 1946.

Re: Withdrawals of cash without obtaining signature and other improper business practices.

Frances Bond (Employee), September 10, 1946.

Re: Inefficient business practices.

O. D. Brick (U.S. Fidelity & Guaranty Co.), September 12, 1946.

Re: $200,000.00 Bond on officers and T. A. Gregory of Association.

Affidavits filed at hearing on motion Temporary Restraining Order, September 14, 1946.

S. I. Bacon, September 13, 1946.

Re: Removal on September 13, 1946, of five brief cases and various large envelopes.

William MacArthur (Accountant), September 13, 1946.
Re: Deposit of almost $5,000,000.00 in Commercial Account not drawing interest.

Answer and cross-claim of defendant Long Beach Federal Savings and Loan Association—Exhibit "A" of April 30, 1946.

"Statement of condition of Long Beach Federal Savings and Loan Association showed total assets $25,943,601.57." Filed in opposition to Motion of Defendants John H. Fahey and A. V. Ammann to Dismiss or to Quash Service on Defendant John H. Fahey.

803 T. A. Gregory, July 10, 1946.
General Outline of organization and growth, etc. of Association and of its seizure and reduction of assets by $8,000,000.00 to that date while in possession of purported Conservator.

Motion for Preliminary Injunction to Restrain the Holding of Administrative Hearing.

T. A. Gregory, June 18, 1946.
Re: Details of seizure and refusal of purported Conservator to give receipts for negotiable instruments, cash, etc., Motion for permission to file supplemental cross-claim and interpleader re Trust Deeds.

H. O. Wallace, August 8, 1946.
Re: Efforts to get Government Attorneys to agree to the Handling of Trust Deeds and their declining to enter into stipulation therefore.

Ethel L. Roberts (Assistant Secretary to Title Service Company), August 8, 1946.
Re: Trust Deeds in Request for Reconvevances.

804 (Affidavit of service by mail—1013A, C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

George M. Washington being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 215 East Sixth Street, Los Angeles, California. That on the 20th day of September, A.D., 1946, affiant served

the within document on the defendants in said action, by placing a true copy thereof in an envelope addressed to James M. Carter, U. S. Attorney, Ronald Walker and Mildred Kluckhohn, Asst. U. S. Attys. and Moe Silverman, Attorneys for John H. Fahey and A. V. Ammann, Federal Home Loan Bank of Los Angeles, c/o O'Melveny & Myers, its attorneys, 900 Title Insurance Bldg., Los Angeles, California and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles. That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

George M. Washington.
GEORGE M. WASHINGTON.

Subscribed and sworn to before me this 20th day of September 1946.

Maxine Laurel Berweiler,
MAXINE LAUREL BERWEILER,
Notary Public in and for said County and State.

My commission expires Jan. 10, 1950.

Here quote from envelope name and address of addressee.

805 Received copy of the within Document this 20th day of September 1946.

THOMAS & WALLACE,
By H. O. Wallace,
H. O. WALLACE,
Attorney for Title Service Company.

Received copy of the within Document this 20th day of September 1946.

WESTOVER AND SMITH,
By WYCKOFF WESTOVER,
Attorney for Plaintiffs.

Received copy of the within document this 20th day of September 1946.

Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for Defendant Robert H. Wallis.

Received copy of the within instrument this 20th day of September, 1946.

JAMES M. CARTER,
U. S. Attorney,
RONALD WALKER and
MILDRED KLUCKHOLM,
Asst. U. S. Attorneys,
MOE SILVERMAN,

.....

Attorneys for John H. Fahey and A. V. Ammann, Defendants.

Received copy of the within document this 20th day of September 1946.

O'MELVENY AND MYERS,

.....

Attorneys for Federal Home Loan Bank of Los Angeles, Third Party Defendant.

806 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Memorandum in opposition to granting of stay of execution

Filed Sept. 21, 1946

Comes now the defendant and cross-claimant Title Service Company and files this, its memorandum, in opposition to the Request for Stay of Execution heretofore filed on behalf of the defendant A. V. Ammann. The granting of such requested stay of execution would result in continuing irreparable damage to this defendant and to the many innocent persons, firms and corporations who are the equitable owners under the deeds of trust wherein this defendant is the trustee and which are adversely affected by this litigation, as well as to the other defendants in this action, all as set forth in affidavits heretofore filed herein. Following is a list of such affidavits to which reference is hereby made and which are hereby incorporated herein by reference:

Affiant	Date of affidavit	Document to which attached
Ethel L. Roberts	August 8, 1946	Motion for Supplemental Interpleader.
H. O. Wallace	August 8, 1946	Same.
S. I. Bacon	September 13, 1946	Filed in hearing for temporary restraining order, September 14, 1946.
William McArthur	September 13, 1946	Same.
Leon Frazer	September 10, 1946	Motion for temporary restraining order heard September 14, 1946.
William McArthur	September 10, 1946	Same.
Frances Bond	September 10, 1946	Same.
Paul Mallonee	September 10, 1946	Same.
Ethel L. Roberts	June 28, 1946	Motion to Restrain Administrative hearing.
S. I. Bacon	July 10, 1946	Opposition to Motion to Dismiss or Quash.
T. A. Gregory	July 10, 1946	Same.
T. A. Gregory	June 28, 1946	Motion to Restrain Administrative Hearing.

That, as is demonstrated by said affidavits, the defendant A. V. Amuann, has dissipated the assets of the defendant Long Beach Federal Savings and Loan Association, has participated in and allowed poor business practices to prevail under his supervision, is not "conserving" the assets of said association and may have removed, or allowed to be removed, assets and records of said association and of this defendant. That if a stay of execution be granted there is no reason to believe that said defendant would amend his manner of handling the property in his care and that the irreparable damage heretofore done and now being done would continue.

808 Dated at Long Beach, California this 20th day of September, 1946.

Respectfully submitted.

THOMAS AND WALLACE,
By H. O. WALLACE,
Attorneys for Title Service Company.

CONCURRENCE

The defendant Robert H. Wallis herewith concurs in and adopts the foregoing objections.

Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for Defendant Robert H. Wallis.

809 (Affidavit of service by mail—1013A, C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

George M. Washington, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over

the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 215 West 6th Street, Los Angeles 14, California. That on the 20th day of September, A.D., 1946, affiant served the within Memorandum in Opposition to Granting of Stay of Execution on the defendants in said action, by placing a true copy thereof in an envelope addressed to James M. Carter, Atty. for John H. Fahey and A. V. Ammann, 600 Federal Building, Los Angeles, California, Federal Home Loan Bank of Los Angeles, c/o O'Melveny & Myers, 900 Title Insurance Building, Los Angeles, California, and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is delivery service by United States mail at the place so addressed —— there is a regular communication by mail between the place of mailing and the place so addressed.

GEORGE M. WASHINGTON.

Subscribed and sworn to before me this 20th day of September 1946.

MAXINE LAUREL BERWEILER,
Notary Public in and for said County and State.

My commission expires Jan. 10, 1950.

Here quote from envelope name and address of addressee.

810 (Affidavit of service by mail—1013A, C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

H. O. Wallace, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 602 Jergins Trust Bldg., Long Beach, 2, California. That on the 20th day of September A.D., 1946, affiant served the within Document on the Def. John H. Fahey in said action, by placing a true copy thereof in envelopes addressed to said defendant and the Attorney General at the business address of said parties, as follows: John H. Fahey; John H. Fahey, Federal Home Loan Bank Commissioner, 101 Indiana Avenue, Washington, D.C. and Attorney General of the United States, Justice Department, Washington, D.C.

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Long Beach, California. That there is delivery service by United States mail at the place so addressed and that there is a regular communication by mail between the place of mailing and the place so addressed.

H. O. Wallace,
H. O. WALLACE,

Subscribed and sworn to before me this 20th day of September 1946.

Bertha E. Cumpton,
BERTHA CUMPTON,
Notary Public in and for said County and State.

My Commission expires Dec. 26, 1949.

Here quote from envelope name and address of addressee.

Here quote from envelope name and address of addressee.

811 Received copy of the within Document this 20th day of September 1946.

CHARLES K. CHAPMAN,
Attorney for Def. Long Beach Federal Savings & Loan Ass'n.

Received copy of the within Document this 20th day of September 1946.

WESTOVER AND SMITH,
By WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

Received copy of the within Document this 20th day of September 1946.

RAYMOND TREMAINE,
Attorney for Def. Robert H. Wallis.

Received copy of the within document this 20th day of September, 1946.

JAMES M. CARTER,
U. S. Attorney.
RONALD WALKER and
MILDRED KLUCKHOHN,
Ass't U. S. Attorneys.
MOE SILVERMAN,

Attorneys for Defs. Fahey and Ammann.

Received copy of the within document this 20th day of September, 1946.

O'MELVENEY AND MYERS,

.....

Attorneys for Federal Home Loan Bank of Los Angeles, 3rd Party Defendant.

816. In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Petition of intervention
Filed Oct. 7, 1946

Comes now the intervenor, Michael J. O'Rourke, and files this complaint in intervention in the above-entitled cause, and alleges:

I

That the Long Beach Federal Loan & Savings Association is the holder of a note and trust deed under Loan #8082 secured by the following described property belonging to the intervenor:

PARCEL I. That portion of Lot 2 of Tract 7996, in the City of Los Angeles, as per map recorded in Book 186, Pages 4 to 7 inclusive of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the intersection of the Northeasterly line of Blueridge Drive with the Easterly line of said Tract 7996, thence along the said last mentioned Northeasterly line North 56° 50′ 25″ West, 37.71 feet to the beginning of a tangent curve concave to the South, leaving a radius of 90 feet and a delta of 64° 14′ 38″, thence westerly along
817 the arc of said curve 65.91 feet; thence North 18° 36′ 25″ East, 109.87 feet; thence South 63° 40′ 22″, East 58.03 feet to a point in the Easterly line of said Tract 7996, said point being distant 131.92 feet northerly, measured along the said Easterly line of Tract 7996, from the point of beginning; thence South 0° 46′ 53″ East, 131.92 feet to the point of beginning.

That the Intervenor has a right to intervene in the above-entitled case against the Long Beach Federal Savings & Loan Association and the Title Service Company under Rule 24 on the ground that the intervenor has a right to

the reconveyance of a trust deed on the above described property upon paying the balance due on the note held by the Long Beach Federal Savings & Loan Association, and that the right to make said reconveyance is involved in litigation in the above-entitled case.

That the Title Service Company has refused to execute a reconveyance of trust deed even though the note held by the Long Beach Federal Savings & Loan Association is discharged. Said refusal is on the ground that the Title Insurance & Trust Company will not accept reconveyances by the Title Service Company of property held as security on loans held by the Long Beach Federal Savings & Loan Association until litigation involving the appointment of a conservator is settled or until order directing reconveyances is made by this court.

That the Intervenor has no remedy but to petition this court to direct the Title Service Company to execute reconveyance of the trust deed upon discharge of the obligation that said deed secures.

That the execution of a reconveyance by the Title Service Company would in no way prejudice or be inimical to the rights of any parties to this litigation.

III

That the Intervenor owes a balance of $3456.03 to the Long Beach Federal Savings & Loan Association on a note secured by a deed of trust on the above described property wherein the Title Service Company is designated as trustee for the Long Beach Federal Savings & Loan Association.

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IV

That the Intervenor has entered into a contract to sell the above described property, that this agreement of sale is in escrow with the Security-First National Bank of Los Angeles, 469 North Canon Drive, Beverly Hills, California, under Escrow #136-19035-M, that there is on deposit in escrow money with instructions to the escrow holder to discharge the note held by the Long Beach Federal Savings & Loan Association and accept reconveyance of the trust deed, that the Title Service Company has refused and still refuses to execute said reconveyance on the ground that the above-entitled litigation in this court involves issues

that would affect the validity of any reconveyance, that refusal of the Title Service Company to execute the reconveyance irreparably injures the Intervenor, that unless said reconveyance is executed by the Title Service Company on or before October 20, 1946, the Intervenor will lose the sale of his property and will suffer great loss and the expenses of cancellation of the escrow agreement, notwithstanding that said reconveyance would in no manner affect the property or legal rights of the litigants in this case.

V

That the Intervenor has instructed the escrow holder to discharge in full the amount of the note held by the Long Beach Federal Savings & Loan Association and to accept reconveyance from the Title Service Company so that an insurable title may be conveyed to the buyer of the Intervenor's property, that the Intervenor seeks an order
819 of this court directing the Title Service Company to execute a reconveyance of the trust deed on Intervenor's above described property upon payment to the Long Beach Federal Savings & Loan Association the balance of the note plus accrued interest to date from funds now on deposit at the Security-First National Bank of Los Angeles in Beverly Hills under escrow; or in the alternative, the intervenor hereby deposits the sum of Three thousand five hundred ($3500) Dollars with the Clerk of this Court and requests that this Court direct and order the intervenor's note held by the Long Beach Federal Savings & Loan Association be delivered up and discharged from said funds on deposit therein, and that the Title Service Company be directed and ordered to execute a reconveyance of the trust deed held on the intervenor's property, that upon the full discharge of the balance of the note and accrued interest the Clerk of this Court return to the intervenor any monies remaining on deposit after the liquidation of the obligation held by the Long Beach Federal Savings & Loan Association.

Wherefore, the Intervenor prays that this Court make an order directing the Title Service Company to execute immediate reconveyance of the trust deed on Intervenor's above described property upon payment to the Long Beach Federal Savings & Loan Association the balance due on said

note secured by trust deed and to accept payment from the Security-First National Bank of Los Angeles, 469 North Canon Drive, Beverly Hills, California, from funds now held by them under Escrow #136-19035-M, which money is deposited in said escrow for the specific purpose of discharging the balance due on Intervenor's note held by the Long Beach Federal Savings & Loan Association; or, in the alternative, the Intervenor prays that this Court make an order directing the Clerk of this Court to use
820 monies deposited by the Intervenor to discharge the balance of the note and accrued interest to the Long Beach Federal Savings & Loan Association and direct the Title Service Company to execute a reconveyance of trust deed of Intervenor's above described property held as security for the payment of the aforesaid note.

ARNOLD O. STEELE,
Attorney for Michael J. O'Rourke, Intervenor, 245-A South Beverly Drive, Beverly Hills, California, CR-1-5201, BR-2-1735.

826 In the District Court of the United States
Southern District of California, Central Division

[File endorsement omitted.]

Civil File No. 5421-P.H.

PAUL MALLONEE, C. H. NEWHOUSE, and WINNIE BUCKLIN, individually and as Representatives of a class, suing for and on behalf of all of the shareholder members of the LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, an Association organized and existing under and by virtue of the laws of the United States of America, PLAINTIFFS

vs.

JOHN H. FAHEY, individually, JOHN H. FAHEY, as Chairman of the Federal Home Loan Bank Board, A. V. AMMANN, individually and A. V. AMMANN, as the purported Conservator for the LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, TITLE SERVICE COMPANY, sued herein as John Doe, one (Cross claimant in interpleader), R. H. WALLIS, sued herein as John Doe, two (Cross claimant in interpleader) et al., DEFENDANTS

827 "SUB NOMINAE"

HOME INVESTMENT COMPANY OF LONG BEACH, a corporation, INTERVENER,

v.

PAUL MALLONEE, et al., and JOHN H. FAHEY, et al., DEFENDANTS IN INTERVENTION.

THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, DEFENDANT AND THIRD PARTY PLAINTIFF,

v.

FEDERAL HOME LOAN BANK, et al., THIRD PARTY DEFENDANTS.

ROBERT H. WALLIS, DEFENDANT AND THIRD PARTY DEFENDANT,

v.

JOHN H. FAHEY, et al., THIRD PARTY DEFENDANTS.

TITLE SERVICE COMPANY, a corporation, DEFENDANT AND THIRD PARTY PLAINTIFF,

v.

JOHN H. FAHEY, et al., THIRD PARTY DEFENDANTS.

Findings, conclusions of law, and decree
Filed Sept. 30, 1946

828 Various motions came on to be heard on the 15th day of July, 1946, at 2:00 o'clock P. M., in courtroom No. 3 of the above entitled Court, situated in the Federal Building, in the City of Los Angeles, State of California, upon the pleadings, notices of motion, affidavits, points and authorities and arguments of counsel, before a Statutory Court convened, pursuant to the provisions of Section 380 (a) of Title 28 of U. S. C. A., composed of the Honorable William E. Orr, Judge of the Circuit Court of Appeals of the 9th Circuit, presiding, Judge David W. Ling, Judge of the District Court for the District of Arizona, and Judge Peirson M. Hall, Judge of the District Court for the Southern District of California.

Appearing as counsel for the various parties were: Messrs. Wyckoff Westover and Steadman G. Smith, of

the firm of Westover & Smith, Attorneys for the Plaintiffs;

James Carter, Esquire, United States Attorney at Los Angeles, by Rolland L. Walker, Esquire, Assistant United States Attorney, and Moe Silverman, Esquire, of the Nebraska Bar, Associate Counsel, representing the defendant A. V. Ammann, individually; and as conservator of the Long Beach Federal Savings and Loan Association, and the defendant John H. Fahey, specially for the limited purpose only of making a motion to dismiss and to quash service of process upon defendant John H. Fahey;

Charles K. Chapman, Esquire, appearing for the defendant and cross claimant Long Beach Federal Savings and Loan Association;

H. O. Wallace, Esquire, of the firm of Thomas & Wallace, appearing as Attorneys for the defendant and cross claimant in interpleader Title Service Company, a corporation; and

Raymond Tremaine, Esquire, appearing as Attorney for the defendant and cross claimant in interpleader Robert H. Wallis.

The following motions were duly called for hearing and were argued by counsel for the respective parties, to wit:

1. Motions of the plaintiffs to continue in force
829 the Temporary Restraining Orders to restrain the Merging of the said Long Beach Federal Savings and Loan Association with any other institutions, and to restrain the holding of an Administrative Hearing by the Federal Home Loan Bank Board or Administration, until the final adjudication and determination of the Plaintiffs' Motions for Preliminary Injunctions.

2. Motion of the defendant A. V. Ammann, individually, and as Conservator of the Long Beach Federal Savings and Loan Association to Dismiss the Complaint.

3. Motion of the defendant A. V. Ammann, individually, and as Conservator of the Long Beach Federal Savings and Loan Association, to Dismiss the Answer and Cross Claim in Interpleader of the defendant Title Service Company, a corporation.

4. Motion of the defendant A. V. Ammann, individually,

and as Conservator of the Long Beach Federal Savings and Loan Association to Dismiss the Answer and Cross Claim in Interpleader of the defendant Robert H. Wallis.

5. Motion of the defendant John H. Fahey, individually, and as Chairman of the Federal Home Loan Bank Board, appearing specially to Dismiss the Complaint, or in lieu thereof to Quash Service of Summons upon defendant John H. Fahey, individually, and as Federal Home Loan Bank Commissioner.

6. Motion of the plaintiffs for Preliminary Injunction to restrain the defendants John H. Fahey and A. V. Ammann individually and in their representative capacities, from merging or consolidating Long Beach Federal Savings and Loan Association, or commingling its assets with other institutions, and to take testimony and evidence at the hearing thereof.

7. Motion of the plaintiffs for preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Administration or any other persons.

Counsel for plaintiffs presented a written motion to amend the Complaint in certain particulars, and
830 leave of Court being first had and obtained, the same allowed to be filed and their being no objection to said motion, the motion to amend was granted by the Court, and the Complaint so amended.

The Court next considered the matter of the plaintiffs' motions to continue in force the temporary restraining orders to restrain the merging of the said Long Beach Federal Savings and Loan Association with any other institutions, and to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, until the determination on the Plaintiffs' Motions for preliminary injunctions, and the Court thereupon granted both of said motions and continued the same in full force and effect until the determination by this three-judge Court re the question of constitutionality at issue herein.

The motions of the plaintiffs and of the defendant Long Beach Federal Savings and Loan Association to take oral testimony and evidence at the hearing on the Plaintiffs' motions for preliminary injunctions were both denied by the Court.

At the close of oral argument by counsel representing the respective parties, on the 16th day of July, 1946, the Court requested counsel for the respective parties to submit within five (5) days a compilation of their points and authorities on the sole question of the unconstitutionality of Paragraphs (a) and (d) of Section 5 of the Home Owners Loan Act of 1933, as amended; the said compilations of points and authorities, having been filed within the time allowed by the Court counsel for all parties, and the Court, having considered the same together with the motion, affidavits, pleadings, and arguments, previously presented, now makes its findings as follows, to wit:

FINDINGS

I

The Long Beach Federal Savings and Loan Association was organized in 1934 under the Federal Home 831 Loan Bank Act, as amended. At the time of its incorporation its assets had a value of approximately $7,500.00. It has had the same president and board of directors during the ensuing years under whose management and guidance the institution has expanded to a point where, at the time of the seizure hereinafter referred to, its assets were of a value of approximately $26,000,000.00. It was at the time of seizure entirely solvent, with assets, in addition to an amount sufficient to pay its obligations, in the form of reserves and undivided profits in the sum of $1,300,000.00.

II

On May 20, 1946, A. V. Ammann, by virtue of his appointment as a conservator for said institution by John H. Fahey, Administrator, took charge of said institution, and has since been, and now is, in possession thereof. The conservator took over the Long Beach Federal Savings and Loan Association without notice or hearing of any kind. Subsequent to the taking possession of the bank an administrative hearing was ordered.

III

Plaintiffs are shareholders in the Long Beach Federal Savings and Loan Association and are suing as representatives of all members of that class.

IV

Temporary orders were issued restraining the merger of the institution with other institutions of like character and restraining the commissioner from holding an administrative hearing.

V

That prior to said seizure no demand was made upon said Long Beach Federal Savings and Loan Association, its officers or directors, for the correction of, or change in any of its policies, actions, procedures, or doings of any kind or nature. That there was no official criticism of said Long Beach Federal Savings and Loan Association, or any its officers, directed to it.

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VI

That prior to said seizure no notice was given to defendant Long Beach Federal Savings and Loan Association of any hearing of any kind or nature and the said Long Beach Federal Savings and Loan Association was afforded no opportunity to be heard by defendant John H. Fahey as Federal Home Loan Bank Commissioner, or by any of his assistants, agents, servants or employees, or at all.

VII

That Order No. 5254, dated May 20, 1946, purporting to appoint defendant A. V. Ammann to act as the Conservator of Long Beach Federal Savings and Loan Association and all acts taken by defendant A. V. Ammann, subsequent thereto, were done and made by defendant A. V. Ammann, or under his direction or control, without any authority whatsoever, excepting only such as might claim to be derived from rules and regulations promulgated by said defendant John H. Fahey, under claim of color of authority to make such rules and regulations, pursuant to the rule

making authority purportedly delegated by provision of subdivision (d) of Section 5 of Home Owners Loan Act of 1933, as amended.

VIII

That the defendant John H. Fahey has been duly and regularly served with process, both individually, and in his representative capacity as Federal Home Loan Bank Commissioner.

From the foregoing facts the Court concludes:

CONCLUSIONS OF LAW

1. That Section 5 (d) of the Home Owners Loan Act of 1933 as amended is unconstitutional in that it is repugnant to Article I, Section 1, and Article I, Section 8, Clause 18 and Amendments Nos. IV and V of the Constitution of the United States of America.

2. That the motion of the defendant A. V. Ammann, both individually, and as conservator of the Long Beach Federal Savings and Loan Association to dismiss the complaint and to dismiss the answers and cross claims in interpleader of the defendant Title Service Company, a corporation, and the defendant Robert H. Wallis should be denied; and

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3. That this Court has acquired jurisdiction over the defendant John H. Fahey, that the motion of the defendant John H. Fahey, individually, and as Federal Home Loan Bank Commissioner to dismiss the Complaint, or in lieu thereof to quash service of summons, should be denied; and

4. That the Motions of the plaintiffs for a preliminary injunction to restrain the defendant from merging or consolidating the Long Beach Federal Savings and Loan Association, or commingling its assets with other institutions should be granted and made permanent; and

5. That the motions of the plaintiffs and of the defendant and cross claimant in interpleader, Title Service Company, a corporation, and of the defendant and cross claimant in interpleader Robert H. Wallis for a preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board, or

administration should be granted and made permanent; and

6. That the purported appointment of the defendant A. V. Ammann to act as Conservator for the Long Beach Federal Savings and Loan Association was, and is wholly illegal, null and void, and that all acts done and actions taken by him, as such purported Conservator, are void ab initio and of no force or effect.

DECREE

Now therefore, it is hereby ordered, adjudged and decreed:

1. That the motion of the defendant A. V. Ammann, both individually and as Conservator for the defendant Long Beach Federal Savings and Loan Association to dismiss this action be, and the same is hereby denied.

2. That the motion of the defendant A. V. Ammann, both individually, and as Conservator for the
834 defendant Long Beach Federal Savings and Loan Association to dismiss the answer and cross claim in interpleader of the defendant Title Service Company, a corporation, be, and the same is hereby denied.

3. That the motion of the defendant A. V. Ammann, both individually, and as Conservator for the defendant Long Beach Federal Savings and Loan Association to dismiss the answer and cross claim in interpleader of the defendant Robert H. Wallis, be, and the same is hereby denied.

4. That the motion of defendant John H. Fahey, both individually, and as Federal Home Loan Bank Commissioner, and as Chairman of the Federal Home Loan Bank Board, to dismiss, or in lieu thereof, to quash service of summons be, and the same is hereby denied.

5. That the motion of the plaintiffs for a preliminary injunction to restrain the defendants John H. Fahey, individually and as Federal Home Loan Bank Commissioner, and A. V. Ammann, individually and as the purported Conservator for the Long Beach Federal Savings and Loan Association, the assistants, servants, agents representatives and employees, from merging or consolidating the Long Beach Federal Savings and Loan Association, or commingling its assets with other financial institutions be, and the same is hereby granted. Said

defendants John H. Fahey, individually and as Federal Home Loan Bank Commissioner, and A. V. Ammann, individually and as purported Conservator for the Long Beach Federal Savings and Loan Association, their assistants, servants, agents, representatives and employees, and each of them are hereby permanently restrained and enjoined from making, attempting to make, or instituting any merger, consolidation or reorganization of said Long Beach Federal Savings and Loan Association, and from making any transfers, assignments, conveyances, of any and all of the assets thereof, which might affect or bring about such merger, consolidation and/or reorganization, and from and, of uniting, commingling, joining, or
835 consolidating the securities, assets, cash, resources, property, membership shares of said association with those of any other association, bank, corporation, organization, or institution whatsoever.

6. That the motions of the plaintiffs and of the defendants and cross claimant in interpleader Title Service Company, and of the defendant and cross claimant in interpleader Robert H. Wallis for preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, or any other person be, and the same is hereby granted, and a permanent injunction be, and the same is hereby granted and the defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as the Commissioner thereof, or otherwise, and A. V. Ammann, individually, A. V. Ammann, as purported Conservator of the Long Beach Federal Savings and Loan Association or otherwise, and any and all of their agents, employees, servants, conservators, hearing officers and subordinates, each and all of them, be and they hereby are, restrained and enjoined from directly or indirectly, holding any administrative hearing, or proceeding with, the holding or attempting to hold, any hearing, or hearings, pursuant to Order No. 5309 of the Federal Home Loan Bank Administration, or at all.

7. That the defendant A. V. Ammann, both individually, and as purported Conservator of the Long Beach Federal Savings and Loan Association be, and he is hereby removed forthwith as such purported Conservator.

8. That the said officers of the Long Beach Federal Savings and Loan Association be forthwith restored to, and placed in full possession of, and control of the business and all of the business of said Association, and that the said defendants John H. Fahey, A. V. Ammann and their subordinates, agents, employees and servants be, and they are hereby ordered to forthwith deliver, return, relinquish, assign, transfer, convey, quitclaim, surrender and
836 set over to said officers, title control and possession of any and all property of every kind and nature, wheresoever situated, owned by the Long Beach Federal Savings and Loan Association, on or after May 20, 1946, or pertaining to the operation of said Association by said persons thereafter, including all books, records, reports, accounts and other documents, and unless possession of the Long Beach Federal Savings and Loan Association, as aforesaid, upon service of a copy of this decree upon defendant A. V. Ammann, either personally or upon his servant, agent or representative in possession, is forthwith delivered, as aforesaid, let a writ of assistance and possession issue placing the officers of the Long Beach Federal Savings and Loan Association in peaceable and complete possession of the assets, property and business of said Long Beach Federal Savings and Loan Association.

9. That the defendants, A. V. Ammann and John H. Fahey, both individually, and in their representative capacities, are ordered to forthwith render an inventory to the Long Beach Federal Savings and Loan Association and its officers and directors of all property, assets, securities, cash, instruments, documents, records, and effects, pertaining to or taken from the possession of the said Long Beach Federal Savings and Loan Association, or received by said defendants on or subsequent to May 20, 1946, and the said defendants, and each of them, are further hereby ordered to render, within ten days from the date hereof, their verified account in accordance with rules of sound accounting practice, to this Court, of all monies and income of all kinds received by them, or either of them, and for all acts and transactions done by them, or either of them, while acting as the alleged or purported Conservator or Conservators of said Long Beach Federal Savings

and Loan Association, together with interest on all such sums of money so received, and together with a detailed and complete report of any and all transactions had, or done by them as such purported Conservator or
837 Conservators of said Association, on and since May 20, 1946, and that they are further ordered to deliver forthwith to said Long Beach Federal Savings and Loan Association and its officers all such property, stock, bonds, notes and other personal property and such sums of money as they may have received during said period of time, less only such disbursements as the Court shall have found to have been properly made by them, if any.

10. That neither the defendant A. V. Ammann, nor the defendant John H. Fahey in their representative capacities have had any right, title or interest, or claim to any of the properties herein mentioned, or to the properties heretofore interplead and deposited with the Clerk of this Court by the defendants and cross claimants in interpleader. The defendants A. V. Ammann and John H. Fahey in their representative capacities are hereby permanently enjoined from ever asserting any claims, right, title or interest in or to said property, or any of it.

11. That the defendants A. V. Ammann and John H. Fahey are hereby further ordered, within ten days from the date hereof, to produce and deposit with the Clerk of this Court, the said Conservator's bond of the defendant A. V. Ammann, and that the said bond shall remain in full force and effect until further order of this Court.

12. That the defendants John H. Fahey and A. V. Ammann are hereby ordered to do and perform such acts as are necessary or expedient to carry out the provisions hereof.

13. That the plaintiffs and the defendants and cross complainant Long Beach Federal Savings and Loan Association, Title Service Company, a corporation, and Robert H. Wallis, recover their costs of suit herein from the defendants A. V. Ammann and the defendant John H. Fahey in the sum of $320.79 favor plaintiffs; $24.36 favor Title Service Company; $305.82 favor L. B. Fed. Sav. and Loan.

14. There is reserved to the District Court the right to

make such other and further orders herein as shall
838 hereafter be necessary to determine collateral issues hereto and to give to this Decree full force and effect.

Dated: At Los Angeles, this 30th day of September 1946, 10 o'clock a. m.

Wm. E. Orr,
WILLIAM E. ORR,
Judge of the Circuit Court of Appeals.

Dave W. Ling,
DAVID W. LING,
Judge of the District Court of the United States.

Peirson M. Hall,
PEIRSON M. HALL,
Judge of the District Court of the United States.

Judgment entered in Civ. Doc. 10 :05 a. m. Docketed Sept. 30, 1946. C. O. Book 40, page 86–98. Edmund L. Smith, Clerk, by J. M. Horn, Deputy.

Approved as to form: September 11th, 1946.
By Raymond Tremaine,
RAYMOND TREMAINE,
Attorney for Defendant, Robert H. Wallis.

Approved as to form: September 11, 1946.
O'MELVENEY & MYERS,
By JACKSON E. CHANCE,
Richard Fitzpatrick,
RICHARD FITZPATRICK,
Attorneys for the Third Party Defendant, Federal Home Loan Bank of Los Angeles.

Approved as to form: September 11, 1946.
WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Plaintiffs.

Approved as to form: September —, 1946.

JAMES M. CARTER,
United States Attorney.
By ROLLAND WALKER,
Asst. United States Attorney,
Attorneys for Defendants, A. V. Ammann and John H. Fahey.

Approved as to form: September 11, 1946.

By Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Defendant,
Long Beach Federal Savings and Loan Association.

Approved as to form: September 11, 1946.

THOMAS & WALLACE,
By H. O. Wallace,
H. O. WALLACE,
Attorneys for Defendant, Title Service Company.

Received copy of the within document this 12th day of September, 1946.

RONALD WALKER,
By M. L. K.,
Attorney for A. V. Ammann and John H. Fahey, Specially.

839 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order granting stay of execution
Filed Sept. 30, 1946

Defendant, A. V. Ammann, having submitted request for a stay of execution and enforcement of the decree herein in so far as it may provide for the immediate removal of defendant, A. V. Ammann, as conservator, or for relief other than through an interlocutory injunction restraining merger or consolidation and the holding of an administrative hearing,

And it appearing to the Court that such request should be granted,

It is hereby ordered that the execution and enforcement of said decree, as requested, be, and it hereby is, stayed for a period of.....days from and after the entry thereof.

Dated this 3 day of ..... 1946.

....., *United States Circuit Judge.*

....., *United States District Judge.*

....., *United States District Judge.*

10:A.M. Sept. 30th 1946. Stay denied. Wm. E. Orr, CJ. Dave W. Ling. Peirson M. Hall.

845 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Writ of assistance and possession
Filed Oct. 10, 1946

The People of the United States of America:

To the United States Marshal of the District Court of United States, Southern District of California, Central Division, at Los Angeles, California, or to any other United States Marshal, Greetings:

Whereas, on the 30th day of September, 1946,
847 Paul Mallonee C. H. Newhouse and Winnie Bucklin, individually, and as representatives of a class, suing for, and on behalf of the shareholder members of the Long Beach Federal Savings and Loan Association, plaintiffs, and the defendant, Long Beach Federal Savings and Loan Association, recovered a judgment and decree in the District Court of the United States, Southern District of California, Central Division, against the defendant, John H. Fahey, individually, John H. Fahey, as Chairman (or commissioner) of the Federal Home Loan Bank Board; A. V. Ammann, individually, and A. V. Ammann, as the purported Conservator for the Long Beach Federal Savings and Loan Association, and

their subordinates, agents, employees and servants, for the possession among other things of the assets, property and business of said Long Beach Federal Savings and Loan Association and all of its properties, both real and personal, wherever situated.

And whereas, The said judgment and decree was entered in the records of said court and judgment and decree was filed in the Office of the Clerk of said Court in the County of Los Angeles, State of California.

Now therefore, you are hereby commanded and required to place the duly elected officers and directors, or any of them, to wit: Thomas A. Gregory, J. E. Gregory, S. I. Bacon, J. S. Watts, J. K. Reeder, M. T. Killingsworth and Ethel L. Barlow, in quiet and peaceable possession and in complete and full possession of, and control of, the business and all of the business of the said Long Beach Federal Savings and Loan Association, and any and all of its property of every kind and nature wheresoever situated and including any and all assets and property, both real and personal, belonging to the said Association, or in any way pertaining to the operation of said Association, and also including all books, records, reports, accounts and other documents of said Long Beach Federal Savings and Loan Association.

848 And you are further required to make return of this Writ of Possession and Assistance within 10 days of your receipt hereof, with what have you done endorsed hereon.

Witness the Honorable Presiding Justice, William E. Orr, United States Circuit Judge and the Honorable Associate Justices, Dave W. Ling, United States District Judge and Peirson M. Hall, United States District Judge of the Statutory Three-Judge Court heretofore regularly convened, pursuant to the provisions of Section 380 (a), Title 28 U.S.C. Annotated and attested by hand and the seal of said Court this 30 day of Sept., 1946.

[SEAL]

EDMUND L. SMITH,
Clerk of said Court.
By EDW. F. DREW,
Deputy.

(Issued pursuant to the provisions of Rule 70 and 71 of the Rules of Civil Procedure.)

849 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Findings, Conclusion, Law & Decree, Writ of Assistance & Possession on the therein-named Raymond S. Stredkler, Examiner for Federal Home Loan Bank by handing to and leaving a true and correct copy thereof with him personally at Long Beach California in said District on the 30th day of September 1946.

Robert E. Clark,
ROBERT E. CLARK,
U. S. Marshal.
By T. R. Keefe,
THOMAS R. KEEFE,
Deputy U. S. Marshal.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Findings, Conclusion, Law & Decree, Writ of Assistance & Possession on the therein-named A. V. Ammann, Conservator of Long Beach Federal Savings & Loan A. V. Ammann, individually by handing to and leaving a true and correct copy thereof with him personally at Long Beach California in said District on the 30th day of September 1946.

Robert E. Clark,
ROBERT E. CLARK,
U. S. Marshal.
By T. R. Keefe,
THOMAS R. KEEFE,
Deputy U. S. Marshal.

850 RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Findings, Conclusion, Law & Decree, Writ of Assistance & Possession on the therein-named M. W. Daubney, Asst. Vice President of Bank of America, 3rd & American Ave. Long Beach by handing to and leaving a true and correct copy thereof with M. W. Daubney personally at Long Beach California in said District on the 30th day of September 1946.

ROBERT E. CLARK,
U. S. Marshal.

By T. R. Keefe,
THOMAS R. KEEFE,
Deputy U. S. Marshal.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Writ of Assistance & Possession on the therein-named T. A. Gregory, President of Long Beach Federal Savings and Loan by handing to and leaving a true and correct copy thereof with him personally at Long Beach California in said District on the 30th day of September 1946.

ROBERT E. CLARK,
U. S. Marshal.

By T. R. Keefe,
THOMAS R. KEEFE,
Deputy U. S. Marshal.

851 I, Robert E. Clark, United States Marshal for the Southern District of California, do hereby certify and return that under and by virtue of the within Writ of Assistance, by me received on the 30th day of June, 1946, I served the same on the 30th day of June, 1946, by placing the duly elected officers and directors, to wit, Thomas A. Gregory, President of the Long Beach Federal Savings and Loan Association, in quiet and peaceable possession

and in complete and full possession of and control of the business, and all of the business of the said Long Beach Federal Savings and Loan Association, and all of its property of every kind both real and personal belonging to said Association, and also including all books, records, accounts and other documents of said Association.

Marshal's Civil Docket, No. 29278, Vol. 53, page 494.

ROBERT E. CLARK,
U. S. Marshal.
F. B. MANHART,
Chief Civil Deputy.

852 AMENDED RETURN

I, Robert E. Clark, United States Marshal for the Southern District of California, do hereby certify and return that in obedience to the within Order and Writ of Assistance I restored to peaceful possession all of the assets, property, records, accounts and documents, of whatever kind and nature, both real and personal, of the said Long Beach Federal Savings and Loan Association, by placing in quiet and peaceable possession Mr. T. A. Gregory, President of the Long Beach Federal Savings and Loan Association, on September 30, 1946.

ROBERT E. CLARK,
U. S. Marshal.
T. R. KEEFE,
Deputy.

LOS ANGELES, CALIF., *October 28, 1946.*

855 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Petition for appeal
Filed Oct. 2, 1946

To the District Court of the United States in and for the Southern District of California, Central Division:

John H. Fahey and A. V. Ammann, each individually and respectively as Federal Home Loan Bank Com-

missioner and Conservator for the Long Beach
857 Federal Savings and Loan Association, feeling themselves aggrieved by the judgment and decree made and entered in this cause, Civil Action File No. 5421-P.H., on the 30th days of September, 1946, in the District Court of the United States for the Southern District of California, Central Division, do hereby appeal from said judgment and decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors, which is filed herewith, and petition that this appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said judgment and decree is based, duly authenticated, may be transmitted to the Supreme Court of the United States at Washington, D. C.

Defendants further show to the Court that this appeal is taken by direction of a department of the Government, namely, the Department of Justice.

Dated October 2, 1946.

J. HOWARD MCGRATH,
Solicitor General,
JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association, and John H. Fahey, individually and as Federal Home Loan Bank Commissioner.

858 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Assignment of errors
Filed Oct. 2, 1946

To the District Court of the United States in and for the Southern District of California, Central Division:

Come now the defendants John H. Fahey and A. V. Ammann, each individually and respectively as Federal

Home Loan Bank Commissioner and Conservator for the Long Beach Federal Savings and Loan Association, and in connection with their appeal to the Supreme Court of the United States from the decree of the District Court of the United States for the Southern District of
859 California, Central Division, entered the 30th day of September, 1946, severally make the following assignment of errors upon which they will rely to reverse the decree entered herein:

I

The Court erred in making any determination upon the constitutionality of Section 5(d) of the Home Owners' Loan Act of 1933, as amended, Chapter 64, 48 Stat. 128.

II

The Court erred in holding Section 5(d) of the Home Owners' Loan Act of 1933, as amended, unconstitutional as repugnant to Article I, section 1 or Article I, section 8 of the Constitution of the United States, or as repugnant to any other provision of the Constitution of the United States.

III

The Court erred in making final findings of fact and conclusions of law.

IV

The Court erred in the rendition of a final decree in this case filed and entered September 30, 1946.

V

The Court erred in overruling defendant Ammann's objections to the findings, conclusions of law and decree.

VI

The Court erred in ruling upon defendant Ammann's motion to dismiss the complaint in view of the three judge court's ruling upon the only hearing held before it, which ruling was as follows:

"In order that there be no confusion, so counsel will know exactly what they have to follow, we rule now we will not consider any question presented other than on the constitutionality of the statute under question."

VII

The Court erred in ruling upon defendant
860 Fahey's motion to dismiss or in lieu thereof quash the return of service of summons in view of the Court's said ruling.

VIII

The Court erred in denying defendant Ammann's motion to dismiss.

IX

The Court erred in denying defendant Fahey's motion to dismiss or in lieu thereof quash the return of service of summons.

X

The Court abused its discretion in granting a temporary injunction.

XI

The Court erred in granting a temporary injunction on the ground that Section 5(d) of the Home Owners' Loan Act of 1933, as amended, is unconstitutional.

XII

The Court erred in finding that it had jurisdiction of defendant, John H. Fahey.

XIII

The Court erred in granting temporary and permanent injunctions without any hearing whatsoever upon their issuance and without any hearing or trial upon the facts.

XIV

The Court erred in denying defendant Ammann's motion to dismiss the answer and cross claim in interpleader of defendant, Robert H. Wallis.

XV

The Court erred in denying defendant Ammann's motion to dismiss the answer and cross claim in interpleader of defendant, Title Service Company.

XVI

The Court erred in granting a preliminary and permanent injunction restraining the defendants John H. Fahey, individually and as Federal Home Loan Bank Commissioner, and A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association, from merging or consolidating
861 the Long Beach Federal Savings and Loan Association or commingling its assets with other financial institutions.

XVII

The Court erred in granting a preliminary and permanent injunction restraining the said defendant John H. Fahey and the said A. V. Ammann from holding an administrative hearing.

XVIII

The Court erred in granting a mandatory injunction or order forthwith removing the said A. V. Ammann as Conservator for the Long Beach Federal Savings and Loan Association and restoring the former officers of said Association to full possession of and control of the business of said Association.

XIX

The Court erred in granting the motion of defendant, Long Beach Federal Savings and Loan Association, for leave to file a third party complaint against the Federal Home Loan Bank of San Francisco and others.

Wherefore, these defendants pray that the said decree of the District Court be reversed with directions to dismiss the complaint of the plaintiffs, the cross claims in interpleader of defendants, Robert H. Wallis and Title Service Company, and the third party complaint of

defendant, Long Beach Federal Savings and Loan Association.

Dated October 2, 1946.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General,
JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,

Attorneys for defendant, A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association and John H. Fahey, individually and as Federal Home Loan Bank Commissioner.

862 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order allowing appeal
Filed Oct. 3, 1946

863 *To the District Court of the United States in and for the Southern District of California, Central Division:*

The petition and motion of John H. Fahey and A. V. Ammann, each individually and respectively as Federal Home Loan Bank Commissioner and
864 Conservator for the Long Beach Federal Savings and Loan Association, for appeal from the judgment and decree of this Court, is hereby granted and the said appeal is hereby allowed.

It is further ordered that a certified transcript of the record, proceedings and papers be transmitted to the Supreme Court of the United States at Washington, D. C.

And it appearing that this appeal is taken by direction of a department of the Government, namely the Department of Justice, it is further ordered that no

bond, obligation or security shall be required from the appellants, either to prosecute the appeal or to answer in damages for costs.

Dated this 3rd day of October 1946.

PEIRSON M. HALL,
Judge.

867 In United States District Court

[Title omitted.]

Minute Order
Oct. 7, 1946

This cause coming on for hearing on (1) motion of the cross-claimant, Title Service Co., for permission to file Supplemental Cross-Claim in Interpleader, pursuant to notice thereof filed August 9, 1946; and (2) hearing on motion of Michael J. O'Rourke for an order allowing the filing of a petition in intervention, pursuant to notice filed September 26, 1946; Thomas & Wallace, by H. O. Wallace, Esq., appearing for Title Service Co.; Arnold O. Steele, Esq., appearing for Michael J. O'Rourke; Ronald Walker, Esq., Assistant U. S. Attorney, appearing for the Government; Westover & Smith, by Wyckoff Westover, Esq., appearing for plaintiffs:

There being no objections by counsel appearing, it is ordered that motion of the cross-claimant, Title Service Co., for permission to file Supplemental Cross-Claim in Interpleader, is granted and any further cross-claims may be filed without notice.

Attorney Walker objects to petition of Michael J. O'Rourke for an order allowing the filing of a petition in intervention. It is ordered that said motion be granted.

885 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order directing deposit of money with this court and directing payment of note request for reconveyance and reconveyance of trust deed

Filed Oct. 7, 1946

This action came on to be heard upon the pleadings and upon the consideration whereof it is ordered as follows:

(1) That upon the deposit by the Intervenor with Clerk of the Registry of this Court, the amount of the Intervenor's note due as of May 20, 1946, and the amount of interest accrued subsequently plus $2.50 reconveyance fee;

(2) That the Conservator of the Long Beach Federal Savings and Loan Association, A. V. Ammons deliver the note of Michael J. O'Rouke, the request for reconveyance and the Deed of Trust securing said note to the aforesaid Clerk of Registry;

(3) That the Long Beach Federal Savings and Loan Association shall deliver to the Clerk of Registry of this Court its request for reconveyance;

(4) That the Title Service Company shall deliver its reconveyance of Trust Deed held on Michael J. O'Rouke's property.

Upon fulfillment of the above provisions the Clerk of the Registry of this Court is instructed to;

886 (a) Accept from Michael J. O'Rouke money or a Cashier's check amounting to the sum of 3,456.03 Dollars, principal, and 34.06 Dollars interest accrued since May 20, 1946 to Oct. 20, 1946 plus $2.50 reconveyance fee;

(b) Cancel said note of Michael J. O'Rouke and Deed of Trust and retain in file.

(c) Deliver reconveyance to said Michael J. O'Rouke.

Dated this 7th day of October 1946.

PEIRSON M. HALL,
Judge of the District Court of The United States.

Approved as to form.

RONALD WALKER,
Attorney for deft. A. V. Ammann.

Oct. 7, 1946, 2 P. M.

888 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Praecipe for record on appeal
Filed Oct. 15, 1946

To the Clerk of the United States District Court for the Southern District of California:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to appeal allowed in the above entitled cause, and to include in such transcript the following papers and exhibits:

1. Complaint
2. Summons and alias summonses issued thereon
3. All returns of service upon summonses and alias summonses
4. Notice of Motion for Preliminary Injunction
5. Motion for Temporary Restraining Order, filed May 27, 1946
6. Affidavit of Paul Mallonee
7. Restraining Order, filed May 27, 1946
8. Answer and Cross-claim in Interpleader of Title Service Company
9. Summons and Alias Summons on Cross-claim in Interpleader of Title Service Company

889 10. Order Continuing to June 24, 1946 for the Purpose of Setting Hearing Date on Motion for Preliminary Injunction and Continuing Temporary Restraining Order

11. Motion for Order on Absent Defendants
12. Order for Service on Absent Defendants, Certificate Thereto
13. Return of Service Thereon
14. Affidavit of Wyckoff Westover for Order Directing Absent Defendants to Appear
15. Motion for Order Upon Absent Defendants
16. Affidavit of H. O. Wallace for Order Directing Absent Defendants to Appear
17. Order for Service on Absent Defendants and Certificate Thereto, filed June 10, 1946

18. Return of Service Thereon
19. Answer and Cross-claim in Interpleader of Robert H. Wallis
20. Summons and Alias Summons on Cross-claim in Interpleader of Robert H. Wallis.
21. Motion for Preliminary Injunction, and to Take Testimony and Evidence at the Hearing thereof
22. Affidavits of Keith Linden and Ben O. Reddick in support thereof
23. Notice of Motion for Hearing of Motion for Preliminary Injunction on Oral Testimony
24. Affidavit of S. I. Bacon in support thereof
25. Notice of Motion to Dismiss
26. Motion to Dismiss
27. Affidavit of Harold Lee
28. Notice of Motion for Preliminary Injunction to Restrain the Holding of an Administrative Hearing
29. Motion for Preliminary Injunction to Restrain the Holding of an Administrative Hearing and Affidavits attached thereto, filed June 20, 1946
890 30. Motion for Preliminary Injunction to Restrain Holding of Administrative Hearing and Affidavit of Ethel L. Roberts in support thereof, filed June 28, 1946
31. Affidavit of J. Francis Moore with all exhibits thereto attached
32. Order of Court setting for hearing various motions, filed July 1, 1946
33. Order Setting the 15th day of July, 1946, for Hearing by Court Composed of Three Judges, of the plaintiffs' motions for Preliminary Injunctions to Restrain the Merging or Commingling of Assets and to Restrain the Holding of Administrative Hearing and Continuing Temporary Restraining Order in Force.
34. Motion for Temporary Restraining Order to Enjoin the Holding of an Administrative Hearing, together with affidavit of Wyckoff Westover, filed July 1, 1946
35. Restraining Order re Holding of Administrative Hearing
36. Third Party Complaint (For Return of Property, Accounting and for Declaratory Relief)
37. Answer to:
1. Plaintiffs' Complaint.

2. Cross-claim of Defendant Title Service Company

3. Cross-claim in Interpleader of defendant Robert H. Wallis, and Cross-claim of defendant, Long Beach Federal Savings and Loan Association

38. Notice of Hearing by Court Composed of Three Judges

39. Notice of Motion to Dismiss Answer and Cross-claim in Interpleader of Robert H. Wallis

40. Motion to Dismiss Answer and Cross-claim in Interpleader of Robert H. Wallis

891 41. Notice of Motion to Dismiss Answer and Cross-claim in Interpleader of Title Service Company.

42. Motion to Dismiss Answer and Cross-claim in Interpleader of Title Service Company

43. Notice of Motion to Dismiss or in Lieu thereof to Quash Return of Service of Summons

44. Motion to Dismiss or in Lieu Thereof to Quash Return of Service of Summons

45. Affidavit of Ray E. Dougherty, filed July 5, 1946

46. Order Designating Two Additional Judges Pursuant to 28 U. S. C. A. Section 380(a) to Participate in the above hearing

47. Affidavit of T. A. Gregory re Pertinent facts in opposition to motions of defendants, Fahey and Ammann, to dismiss or to quash return of service of summons on defendant, John H. Fahey

48. Affidavit of S. I. Bacon in Opposition to Motion to Dismiss or to Quash Return of Service of Summons

49. Affidavit of Robert H. Wallis, filed July 10, 1946

50. Affidavit of Harold Lee, filed July 10, 1946

51. Affidavit of A. V. Ammann, filed July 10, 1946

52. Affidavit of Ray E. Dougherty, filed July 10, 1946

53. Amendments to Complaint. (first three pages thereof only)

54. Opinion of the Court filed September 5, 1946

55. Minute Order of Court re: Application for Permission to file supplemental cross-claim in interpleader and extending time of all parties to plead

56. Objections of defendants to Proposed Findings, Conclusions of Law and Decree

57. Plaintiffs' Response to Defendants Fahey and Am

mann's Objections to Proposed Findings, Conclusions of Law and Decree

58. Answer of Defendant Long Beach Federal Savings and Loan Association to Objections to Proposed Findings, Conclusions of Law and Decree

892 59. Answer of Defendant and Cross-claimant Title Service Company to Objections of Defendant, A. V. Ammann to Proposed Findings, Conclusions of Law and Decree

60. Findings, Conclusions of Law and Decree

61. Petition for Appeal

62. Assignment of Errors

63. Jurisdictional Statement with copy of Opinion, Findings, Conclusions and Decree attached

64. Statement Directing Attention to Rule 12(3)

65. Order Allowing Appeal

66. Citation

67. Acknowledgments and Proof of Service of Citation, Petition for Appeal, Assignment of Errors, Jurisdictional Statement, Statement Directing Attention to Rule 12(3) Revised Rules of Supreme Court and Order Allowing Appeal

68. All Returns of Service filed before entry of decree

69. Entire Transcript of Proceedings of July 15 and 16, 1946, two copies of which are filed herewith

70. Pages 18 to and including line 12 on page 21 of Transcript of Proceedings held July 1, 1946, two copies of which are filed herewith

71. This Praecipe

72. Affidavit of Service thereof

Dated October 15, 1946.

J. HOWARD MCGRATH,
Solicitor General,
JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, A. V. Ammann, Individually and as Conservator for the Long Beach Federal Savings and Loan Association and John H. Fahey, Individually and as Federal Home Loan Bank Commissioner.

895 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Appellees' designation for additional portions of the record on appeal

Filed Oct. 18, 1946

To the Clerk of the United States District Court, in and for the Southern District of California:

The appellees, plaintiffs in the above entitled action, hereby file this, their Designation for Additional Portions of the Record, which they desire to be included in the Record on Appeal.

It is requested that in addition to the portions of said record designated by the Praecipe for Record on Appeal, dated October 15, 1946, which has heretofore been filed with you by the appellants, the defendants, A. V. Ammann and John H. Fahey, by and through their attorneys, James M. Carter, United States Attorney, and Ronald Walker, Assistant United States Attorney, that you include all other documents in the record of said case, save and except Memoranda of Points and Authorities, filed to and including the 5th day of October, 1946; and that

896 there also be included in said Record on Appeal all parts of Reporter's Transcripts not requested by the appellant, to wit:

Transcript for July 1, 1946, July 8, 1946, July 15, 1946, July 16, 1946, September 13, 1946, September 14, 1946.

All the foregoing are to be included in the transcript of Record on Appeal to be filed in the Supreme Court of the United States.

This designation for Additional Portions of the record to make a complete record on appeal to the United States Supreme Court is filed pursuant to the Provisions of subdivision 2, of Rule 10, Rules of the Supreme Court of the United States.

Dated this 17th day of October 1946.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for the Appellees and Plaintiffs.

897 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail of appellees' designation for additional portions of the record on appeal

STATE OF CALIFORNIA,
County of Los Angeles, ss.

Fay Dealy, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 215 West Sixth Street, Los Angeles 14, California; That on the 17th day of October, 1946, affiant served Appellees' Designation for Additional Portions of the Record of Appeal on the defendants in said action, by placing a true copy thereof in an envelope addressed as follows:

Federal Home Loan Bank of Los Angeles, c/o O'Melveny & Myers, its attorneys, 900 Title Insurance Building, Los Angeles 13, California.

898 Long Beach Federal Savings and Loan Association, c/o Charles K. Chapman, its attorney, Ocean Center Building, Long Beach 2, California.

Mr. John H. Fahey, Federal Home Loan Bank Commissioner, Federal Home Loan Bank Bldg., Washington, D. C.

A. V. Ammann & John H. Fahey, c/o James M. Carter, U. S. Attorney, Attn: Ronald Walker, Asst. U. S. Attorney, 1100 Federal Building, Los Angeles, California,

and then by sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office of Los Angeles, California. That there is delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

Fay Dealy.
FAY DEALY.

Subscribed and sworn to before me this 17th day of October 1946.

[SEAL] JENNIE C. PATTERSON,
Notary Public in and for said County and State.

899 Received copy of the within Document this 17th day of October 1946.

H. O. WALLACE,
of THOMAS & WALLACE,
Attorneys for Title Service Co.

Received copy of the within document this 17 day of October 1946.

RAYMOND TREMAINE,
Attorney for Robert H. Wallis.

904 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Separate answer of A. V. Ammann to cross claim in interpleader of Title Service Company
Filed Oct. 21, 1946.

Comes now the defendant, A. V. Ammann, and, without waiving his claim on appeal to the Supreme Court that the decree of this Court filed herein on September 30, 1946, attempts to give all the relief prayed for in the complaint, and there being no order or stipulation extending the time to answer pending the appeal, now files this, his separate answer to the cross-claim in interpleader of Title Service Company, and states:

FIRST DEFENSE

I

The answer and cross-claim in interpleader does not state a claim upon which relief can be granted.

SECOND DEFENSE

I

This defendant denies the allegations of paragraph I of the cross-claim in interpleader.

905 II

As to paragraph IV of said cross-claim, this defendant states that he was, on May 20, 1946, duly and lawfully

appointed conservator for the said Long Beach Federal Savings and Loan Association and at all times complained of was in lawful control of the operations of said Association.

III

This defendant denies the allegations of paragraph V of said cross-claim except as herein explained. This defendant states that there were delivered to the said cross-claimant the notes, deeds of trust, requests for reconveyances, and instructions referred to by the cross-claimant and that each of said trust deeds named the Long Beach Federal Savings and Loan Association as beneficiary, but that said requests for reconveyances were executed by said Long Beach Federal Savings and Loan Association.

IV

This defendant denies the allegation contained in paragraph VI of said cross-claim that the Long Beach Federal Savings and Loan Association notified said cross-claimant, Title Service Company, that said A. V. Ammann's and/or John H. Fahey's purported authority to act for said Long Beach Federal Savings and Loan Association is invalid and unconstitutional and that said authority is being attacked in the above entitled action in this Honorable District Court.

V

This defendant denies that cross-claimant, Title Service Company, is faced with conflicting, inconsistent and contrary demands, as alleged in paragraph VII of said cross-claim and denies that the Long Beach Federal Savings and Loan Association demands and orders said Title Service Company not to issue such reconveyances or warns it that if such reconveyances are issued, said Long Beach Federal Savings and Loan Association will hold it in damages for the total amount of said deeds of trust.

VI

This defendant denies the allegations of paragraph X of said cross-claim.

906

VII

This defendant admits the allegations of paragraph XI of said cross-claim except the allegation of the third sentence thereof commencing with the words "That the purported and attempted substitution," and ending with the words "if any", which sentence defendant denies.

VIII

This defendant denies the allegations of paragraph XII of said cross-claim except the allegation that said deeds of trust contained certain provisions as set forth.

THIRD DEFENSE

As a third and further defense to said cross-claim, this defendant states:

I

That the officers and directors of the Title Service Company are, to a great extent, the same persons who, until the appointment of the defendant as conservator, acted as officers and directors of the Long Beach Federal Savings and Loan Association; that Thomas A. Gregory now is, and since its incorporation has been, the executive and dominating head of Title Service Company, and from the date of its organization until the 20th day of May, 1940, he was the executive and dominating head of the Long Beach Federal Savings and Loan Association.

II

This defendant is informed and believes and accordingly states that the action brought by the plaintiffs herein was induced, procured and financed by said Thomas A. Gregory and certain other persons, to this defendant unknown, acting collusively, to further his and their own personal interests and not to further the interests of the Long Beach Federal Savings and Loan Association or its shareholders; that the cross-claim of defendant, Title Service Company, was collusively filed in an attempt to confer jurisdiction upon the court, and that no justiciable controversy exists as the basis for said cross-claim.

907 III

That no controversy exists between the Long Beach Federal Savings and Loan Association and the cross-claimant, Title Service Company, and that neither this defendant nor defendant, John H. Fahey, makes any claim in connection with said deeds of trust contrary to or conflicting with the claim of the Long Beach Federal Savings and Loan Association.

Wherefore, this defendant prays that the cross-claim in interpleader of Title Service Company be dismissed and that he recover his costs and disbursements herein, and for such other and further relief as may be proper in the premises.

Dated October 18, 1946.

JAMES M. CARTER,
United States Attorney,
ROMAN WALKER,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, A. V. Ammann, Individually and as Conservator for the Long Beach Federal Savings and Loan Association.

908 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Separate answer of A. V. Ammann
Filed Oct. 21, 1946

Comes now the defendant A. V. Ammann and, without waiving his claim on appeal to the Supreme Court that the decree of this court filed herein on September 30, 1946, attempts to give all the relief prayed for in the complaint, and there being no order or stipulation extending the time to answer pending the appeal, now files this, his separate answer to the complaint of the plaintiffs, and states:

FIRST DEFENSE

I

That the complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

I

This defendant denies that the principal place of business and all of the private property, real property, personal property, securities, negotiable bonds, cash and assets of the Long Beach Federal Savings and Loan Association or any other property or assets of said
909 Association have been unlawfully, or at all, seized and diverted, and denies they are unlawfully, or at all, held and detained by John H. Fahey, individually, John H. Fahey as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, individually, A. V. Ammann as the purported conservator or conservator for the Long Beach Federal Savings and Loan Association, all as alleged in paragraph II of plaintiffs' complaint. This defendant states that all of the property and assets of the Long Beach Federal Savings and Loan Association are, and at all times complained of have been, held by the said Long Beach Federal Savings and Loan Association and by no one else; that title to all said property has at all said times remained in the Long Beach Federal Savings and Loan Association save and except as said Association has, in the normal course of its business, transferred items thereof for valid consideration.

II

This defendant denies all the allegations set forth in paragraph VII of plaintiffs' complaint, except that he admits that upon the 20th day of May, 1946, he appeared at the offices of the Long Beach Federal Savings and Loan Association and announced that he had been appointed conservator for the Long Beach Federal Savings and Loan Association.

III

This defendant denies all the allegations contained in paragraph VIII of plaintiffs' complaint except the allegation "that no defects exist in the capital structure".

IV

This defendant denies all the allegations of paragraph

IX of plaintiffs' complaint except the allegation that "said Federal Home Loan Bank of Los Angeles was fully and completely financially solvent and had a surplus of nearly Two Million ($2,000,000.00) Dollars", and except the further allegation that "Long Beach Federal Savings and Loan Association owned Three hundred and sixty thousand ($360,000.00) Dollars paid in cash value of the stock of said Federal Home Loan Bank of Los Angeles".

910

V

This defendant denies all of the allegations of paragraph X of plaintiffs' complaint.

VI

This defendant denies all the allegations of paragraph XI of plaintiffs' complaint.

VII

This defendant denies all the allegations of paragraph XII of plaintiffs' complaint.

VIII

This defendant denies all the allegations of paragraph XIII of plaintiffs' complaint.

IX

This defendant denies all the allegations of paragraph XIV of plaintiffs' complaint.

X

This defendant denies the allegations of paragraph XV of plaintiffs' complaint except the allegations that since May 20, 1946, dividends have been declared on certain assets, coupons and/or interest payments have accrued and been paid and/or clipped on account of bonds owned by said association and that various and sundry payments of principal and interest have been made on account of mortgages, trust deeds, and various other notes owned by said Association.

XI

This defendant denies the allegations of paragraph XVI of plaintiffs' complaint and states that any disbursements made and any sums received have been made or received by said Long Beach Federal Savings and Loan Association and not by the defendants, Ammann or Fahey.

XII

Defendant admits the first sentence of paragraph XVII of plaintiffs' complaint and denies the rest of said paragraph.

911

XIII

This defendant denies the allegations of paragraph 1 of plaintiffs' amendments to their complaint in so far as it relates to John H. Fahey as Federal Home Loan Bank Commissioner and states that as such Commissioner, the said John H. Fahey is a resident of the City of Washington and the District of Columbia.

XIV

As to paragraph 2 of plaintiffs' amendments to their complaint, this defendants denies all the allegations thereof except the allegation that the rules and regulations of the Federal Home Loan Bank Administration provide "Such officers and directors, or any of them, shall not thereafter have, exercise, or act in connection with, any such rights, powers, or privileges, or any asset or property of any nature of the Association."

XV

This defendant denies the allegations of paragraph 3 of plaintiffs' amendments to their complaint.

XVI

This defendant denies the allegations of paragraph 4 of plaintiffs' amendments to their complaint.

THIRD DEFENSE

For a third and further defense this defendant states:

I

That on or about July 10, 1934, the Long Beach Federal Savings and Loan Association was organized and incorporated under and by virtue of rules and regulations adopted by the Federal Home Loan Bank Board pursuant to Section 5 of the Home Owners' Loan Act of 1933, as amended, Ch. 64, Sec. 5, 48 Stat. 128 (12 U.S.C.A., sec. 1464).

II

That there was received in the office of the Federal Home Loan Bank Board shortly subsequent to its date, an application for permission to organize a Federal savings and loan association, which application was dated May 15, 1934, together with a subscription to shares and a petition
912 for charter dated May 21, 1934, which petition was signed by T. A. Gregory, J. S. Watts, J. E. Gregory, J. K. Reeder and S. I. Bacon; that in said application for permission to organize, the following statement, among others, appeared:

"(4) Applicants agree not to represent themselves as authorized to organize such an association until this application is acted upon favorably by said Board or the chief executive officer of the Federal home loan bank of the district or a duly authorized organizer for the Board, and that upon such action they will proceed only in accordance with the provisions of Home Owners' Loan Act of 1933 and rules and regulations made thereunder."

That in said petition for charter, among others, are the following statements:

"5. Petitioners, in good faith, desire to promote thrift and home ownership in their community by the accumulation of funds for home financing in accordance with the provisions of said act and the rules and regulations made thereunder.

"7. Wherefore, petitioners pray that they, their associates, and successors, be incorporated and made a body corporate under said name and style with all powers, privileges and immunities, and subject to such conditions and restrictions as are provided in said act and rules and regulations made thereunder."

III

That relying upon the statements made in said application and petition, the Federal Home Loan Bank Board issued to the Long Beach Federal Savings and Loan Association on or about July 10, 1934, a charter known as Charter E, which charter was accepted by said Association; that the Federal Home Loan Bank Board would not have issued said charter if such statements, agreements and promises had not been made and been relied upon by it. That among the provisions contained in said charter were the following:

"15. The association shall at all times be subject to the provisions of the Home Owners' Loan Act of 1933, providing for Federal savings and loan associations, and
913 to any amendments thereof, and to any valid rules and regulations made thereunder as the same may be amended from time to time.

"19. The bylaws adopted by the association shall provide for the management of the association within the provisions of the law and this charter and the rules and regulations of the Federal Home Loan Bank Board.

"20. The association may be liquidated, merged, consolidated, or reorganized, as is provided in the rules and regulations for Federal savings and loan associations made by the Federal Home Loan Bank Board."

IV

That at the time of the application for and issuance and acceptance of such charter, the following regulation was in full force and effect:

"14. Whenever it shall appear to the Federal Home Loan Bank Board that the interests of the creditors or shareholders of any such association are being jeopardized because such association has violated its charter, or is conducting its business in an unsafe or unauthorized manner, or if such association shall refuse to submit its books, papers, and concerns to the inspection of said Board, or any examiner appointed by said Board, or if any officer or director thereof shall refuse to be examined upon oath touching the concerns of any such association, or if any such association shall suspend payment of its obligations,

or if from any examination or report provided for by these rules and regulations, the Board shall have reason to conclude that such association is in an unsound or unsafe condition to transact business, or if any such association shall neglect or refuse to observe a lawful order of the Board, the Board may, on becoming satisfied of the existence of any or all of the conditions set forth above, forthwith appoint a receiver or conservator, and require of him such bond and security as it deems proper.

914 "Such receiver or conservator, under the direction of the Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and shall make prompt report to the Board of the condition of the association and shall, after 10 days' notice in writing to all shareholders, borrowers, and creditors of the association, sent by mail to their last address as shown on the books of the association, conduct a hearing at the office of the association or some other convenient place designated by him in such notice, at which hearing any interested parties may submit any evidence as to the condition of the association or its management, and may submit any plan for its operation or for a disposition of its assets and a record shall be made and kept of such hearing, and one copy thereof filed with the Federal home-loan bank of which such association is a member and one copy submitted to the Federal Home Loan Bank Board of the evidence submitted at such hearing and the plans submitted for the operation of such association or for the disposition of its assets. The conservator or receiver may subpena witnesses, compel the production of books, record, and documents, swear witnesses, and examine them under oath, and may apply to any court of competent jurisdiction for the enforcement of such processes. Thereafter the conservator or receiver, as the case may be, shall recommend to the Federal Home Loan Bank Board a plan for liquidation, merger, consolidation, or reorganization of the association, and the Board shall give consideration to the same and enter an order providing for the release of the association and its continued operation and the terms therefor or for its liquidation, merger, or consolidation and the terms

therefor. Thereupon the conservator or receiver, as the case may be, shall proceed to dispose of the association as is provided in such order. All costs of such proceedings shall be approved by the Federal Home
915 Loan Bank Board and assessed against the association and its assets and paid by the association or from its assets. In the event of a legal necessity therefor, the conservator or receiver, as the case may be, or any interested party, may apply to any court of competent jurisdiction for direction or for confirmation of any sale or disposition of assets, but said Federal Home Loan Bank Board shall have full and exclusive authority, powers, and jurisdiction to take possession by a conservator or receiver and to hold and administer the assets on an equitable basis."

V

That said Association commenced operations under said charter shortly after the date of its issuance and continued to operate thereunder until on or about the 13th day of April, 1937, and that on said last named date, pursuant to a petition of the Long Beach Federal Savings and Loan Association for an amendment to its charter, and amended charter was issued to said Association known as Charter K; that said Charter K contained, among others, the following provisions:

"3. Objects and powers.—The objects of the association are to promote thrift by providing a convenient and safe method for people to save and invest money and to provide for the sound and economical financing of homes. The statute, this charter, and rules and regulations made thereunder provide for examination and supervision and at the same time for the protection of all private rights concerned, and shall be construed in keeping with the best practices of local mutual thrift and home-financing institutions in the United States.

"The association shall have perpetual succession and power to sue and be sued, complain and defend in any court of law or equity; to have a corporate seal, affixed by imprint, facsimile or otherwise; to appoint officers and agents as its business shall require, and allow them suitable compensation; to have bylaws not inconsistent with the Constitution or laws of the United States, this

charter, and rules and regulations of the Federal
916 Home Loan Bank Board, providing for the management of its property and regulation and government of its affairs; to wind up and dissolve, merge, consolidate, or reorganize in the manner provided by law and rules and regulations made thereunder; and to conduct business in the territory of the United States except as otherwise limited in this charter. The association may purchase, hold, and convey real and personal estate consistent with its objects, purposes, and powers; may mortgage or lease any real and personal estate; and may take such property by gift, devise, or bequest. Unless authorized by the Federal Home Loan Bank Board, the association may not invest in an office building or buildings for the transaction of the business of the association an amount representing the cost of land and buildings in excess of the sum of its undivided profits and reserve accounts."

That said Association has continued to operate under Charter K from the date of its issuance.

VI

That at the time of the application for and issuance and acceptance of such amended charter, the following regulation of the Federal Home Loan Bank Board was in full force and effect:

"Sec. 31. (a) Whenever it shall appear to the Board that the interests of the creditors or members of any Federal association are being jeopardized because such association has violated its charter, bylaws, or these rules and regulations, or is conducting its business in an unsafe or unauthorized manner; or if such association shall refuse to submit its books and papers for inspection by the Board or any examiner appointed by the Board; or if any officer or director thereof shall refuse to be examined under oath by a representative appointed by the Board concerning the affairs of any such association; or if any such association shall suspend payment of its obligations; or if the Board shall conclude that such
917 to transact business; or if any such association shall neglect or refuse to observe a lawful order of the Board, the Board may, on becoming satisfied of the existence of any or all of the conditions set forth above,

forthwith appoint a conservator for such association. Such conservator may propose a plan of reorganization to the Board. The Board may approve a reorganization of such a Federal association.

"(b) In the event that the Board determines that it is necessary to liquidate such association, the Board will appoint the Federal Savings and Loan Insurance Corporation as receiver for the purpose of liquidation.

"(c) Before the appointment of a conservator or receiver, the Federal association will be given opportunity to be heard; provided, however, that the Board may appoint a temporary conservator pending such hearing."

VII

That since the organization and incorporation of said Long Beach Federal Savings and Loan Association, it has, from time to time, submitted requests to the Secretary of the Treasury of the United States and the Home Owners' Loan Corporation, that they subscribe for shares in said Association; that pursuant to such requests, the Secretary of the Treasury and the Home Owners' Loan Corporation on behalf of the United States did so subscribe for and purchase shares of said Association, and thereby provided additional capital for its operation. That said requests and such subscriptions and purchases were made pursuant to the provisions of Section 5 of the Home Owners' Loan Act of 1933, as amended, and pursuant to Rules and Regulations of the Federal Home Loan Bank Board and the Federal Home Loan Bank Administration made under authority thereof.

VIII

That by its incorporation and organization under and by virtue of rules and regulations adopted by the Federal Home Loan Bank Board under authority of Section 5 of the Home Owners' Loan Act of 1933, as
918 amended, and by its acceptance of and operation under charters issued by the Federal Home Loan Bank Board pursuant to rules and regulations adopted under authority of said Act, and by its acceptance of the benefits accruing to it under and by virtue of its being a Federal savings and loan association, the said Long Beach Federal Savings and Loan Association is now estopped to deny the validity of said law or the validity of said rules and regulations issued pursuant thereto.

That by reason of the statements, agreements and promises made in the said application for permission to organize, petition for charter and charter, as herein above set forth, the said Long Beach Federal Savings and Loan Association is estopped to deny the validity of said law or of said rules and regulations.

IX

That at the time the plaintiffs became shareholders in said Long Beach Federal Savings and Loan Association and at all times since, the Long Beach Federal Savings and Loan Association was subject to the provisions of its charter, the law and the rules and regulations, and that the plaintiffs acquired their shares subject to such law, charter and rules and regulations and they are estopped to deny the validity of said law, and said rules and regulations.

FOURTH DEFENSE

I

That the Rules and Regulations of the Federal Home Loan Bank Administration provide that upon the appointment of a conservator for a Federal savings and loan association, such association may demand a more definite statement of the grounds for such appointment and may demand, and upon such demand, shall receive an administrative hearing at which such association or any interested person may show cause why such conservator should not have been appointed and why he should be removed.

II

That pursuant to, and in accordance with, said Rules and Regulations, the Long Beach Federal Savings
919 and Loan Association on or about the 24th day of May, 1946, demanded of the Federal Home Loan Bank Administration a more definite statement of the grounds upon which A. V. Ammann was appointed conservator. That pursuant to such demand, the Federal Home Loan Bank Administration did, on or about the 29th day of May, 1946, furnish such definite statement to said Association. That on or about the 30th day of May, 1946, the said Association demanded of the Federal Home Loan Bank Administration an administrative hearing in accordance with the Rules and Regulations. That

on the 5th day of June, 1946, by its duly adopted Order No. 5309 the Federal Home Loan Bank Administration directed an administrative hearing pursuant to such demand and gave notice thereof, all in accordance with its Rules and Regulations. That by said order July 3, 1946, was set as the date and the city of Los Angeles, State of California, as the place for holding said hearing.

III

That thereafter and on the 1st day of July, 1946, the plaintiffs in this action and the Long Beach Federal Savings and Loan Association secured, over the objections of this defendant, an order of court restraining the holding of said administrative hearing.

IV

That the Federal Home Loan Bank Administration has at all times been ready, able, and willing to hold said administrative hearing, except as restrained by the order of court, and to give the Long Beach Federal Savings and Loan Association and the plaintiffs an opportunity to show cause why the conservator should not have been appointed and why he should be removed.

Wherefore, this defendant prays that the complaint of the plaintiffs be dismissed and that he recover his costs and disbursements herein, and for such other and further relief as may be proper in the premises.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant A. P. Ammann, Individually and as Conservator for the Long Beach Federal Savings and Loan Association.

920 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Motion to dismiss or in lieu thereof to quash return of service of summons by John H. Fahey
Filed Oct. 21, 1946

Comes now defendant, John H. Fahey, and without waiving his claim on appeal to the Supreme Court that

the decree of this Court filed herein on September 30, 1946, attempts to give all the relief prayed for in the complaint, and there being no order or stipulation extending the time to plead pending the appeal, and without waiving his objections heretofore made to the jurisdiction of the Court over the person of this defendant and to the venue, but specifically reserving the same, now moves the Court:

1. To dismiss the cross-claim in interpleader of the defendant, Robert H. Wallis, or in lieu thereof to quash the return of service of summons on the grounds:

(a) That his official residence as Federal Home Loan Bank Commissioner is in the District of Columbia and for the purpose of said cross-complaint he is an inhabitant of the District of Columbia.

921 (b) That his residence as an individual is in the State of Massachusetts and that for the purposes of said cross-complaint he is, as an individual, an inhabitant of the State of Massachusetts.

(c) That said cross-complaint cannot be maintained against him in the State of California.

(d) That he has not been properly served with process in this action.

2. To dismiss the cross-claim in interpleader of Robert H. Wallis on the grounds:

(a) That it does not state a claim upon which relief can be granted.

(b) That the Court does not have jurisdiction of the subject matter thereof.

This motion is based upon the records and files in the above entitled action and the points and authorities attached hereto.

Dated October 17, 1946.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, John H. Fahey, Individually and as Federal Home Loan Bank Commissioner.

922 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion to dismiss by John H. Fahey
Filed Oct. 21, 1946

Comes now the defendant, John H. Fahey, and without waiving his claim on appeal to the Supreme Court that the decree of this Court filed herein on September 30, 1946, attempts to give all the relief prayed for in the complaint, and there being no order or stipulation extending the time to plead pending the appeal, and without waiving his objections heretofore made to the jurisdiction of the Court over the person of this defendant and to the venue, but specifically reserving the same, now moves the Court that the complaint in the above entitled action be dismissed.

This motion is made upon the grounds that the Court is without jurisdiction over the person of this defendant, an indispensable party to this action, and over the subject matter of the action, and upon the further ground that the complaint fails to state a claim upon which relief can be granted.

923 This motion is based upon the records and files in the above entitled action and the points and authorities attached hereto.

Dated October 17, 1946.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, John H. Fahey, Individually and as Federal Home Loan Bank Commissioner.

924 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Separate answer of A. V. Ammann to cross-claim in interpleader of defendant Robert H. Wallis

Filed Oct. 21, 1946

Comes now the defendant, A. V. Ammann, and without waiving his claim on appeal to the Supreme Court that the decree of this Court filed herein on September 30, 1946, attempts to give all the relief prayed for in the complaint, and there being no order or stipulation extending the time to answer pending the appeal, now files this, his separate answer to the cross-claim in interpleader of defendant, Robert H. Wallis, and states:

FIRST DEFENSE

I

That said cross-claim in interpleader does not state a claim upon which relief can be granted.

SECOND DEFENSE

I

This defendant denies the allegations of paragraph I of said cross-claim except the allegations of sub-paragraph (e) thereof.

925 II

This defendant admits the allegation that John H. Fahey is Federal Home Loan Bank Commissioner as stated in paragraph III of said cross-claim and avers that this defendant was on the 20th day of May, 1946, duly and legally appointed conservator for said Long Beach Federal Savings and Loan Association and that at all times complained of he was in lawful control of the operations of said association.

III

This defendant denies that said Robert H. Wallis is, or at any time since May 20, 1946 has been, acting as attorney for

the Long Beach Federal Savings and Loan Association, as alleged in paragraph IV of said cross-claim.

IV

This defendant denies the allegations of paragraph V of said cross-claim, except the allegation that T. A. Gregory was a member of the Board of Directors of the Federal Home Loan Bank of Los Angeles.

V

This defendant denies the allegations of paragraph VI of said cross-claim except the allegations contained in the first sentence thereof.

VI

This defendant denies the allegations of paragraph VII of said cross-claim except the allegation contained in the first sentence thereof.

VII

This defendant denies the allegations of paragraph VIII of said cross-claim except the allegation that three of the members of said Association have filed an action in the above entitled cause and secured the restraining order described.

VIII

This defendant denies the allegations of paragraph IX of said cross-claim.

IX

This defendant denies all the allegations of paragraph X of said cross-claim except the allegation that Robert
926 H. Wallis has incurred liabilities to various firms of attorneys in Washington, D. C., in California, and will, in the future, incur additional expenses, and except the allegations contained in the last sentence of said paragraph, and as to such allegations this defendant states that he is without knowledge or information sufficient to form a belief as to their truth.

X

This defendant denies the allegations of paragraph XI of said cross-claim and avers that said check and the funds

purportedly represented thereby are the property of said Long Beach Federal Savings and Loan Association.

THIRD DEFENSE

As a third and further defense to said cross-claim in interpleader this defendant states:

I

That the cashier's check referred to in said cross-claim has not been endorsed by said Robert H. Wallis and is deposited in court without any endorsement.

FOURTH DEFENSE

As a fourth and further defense, this defendant states:

I

Defendant is informed and believes and accordingly states that said cashier's check was issued upon a check drawn by the Long Beach Federal Savings and Loan Association to the Farmers and Merchants Bank of Long Beach, which latter check was unlawfully directed to be drawn by Thomas A. Gregory, president of the Long Beach Federal Savings and Loan Association; that said check and the cashier's check issued thereon constituted an unlawful diversion of the funds of said Long Beach Federal Savings and Loan Association, and that the said Association is the owner of, and entitled to said cashier's check and the $50,000.00 purportedly represented thereby.

II

That said cashier's check was, by direction of said Thomas A. Gregory, included in the count of cash
927 assets held by the said Long Beach Federal Savings and Loan Association on the 18th day of May, 1946, and that the said Thomas A. Gregory, this defendant is informed and believes, abstracted said cashier's check and unlawfully delivered the same to cross-claimant, Robert H. Wallis.

III

This defendant is informed and believes and accordingly states that the said Robert H. Wallis knew and at all times has known, that said cashier's check was unlawfully

abstracted by said Thomas A. Gregory and that his cross-claim in interpleader was filed as a result of collusion between him and the said Thomas A. Gregory in an attempt to deprive the said Long Beach Federal Savings and Loan Association of its lawful property, and in an attempt to confer jurisdiction on this court.

Wherefore, this defendant prays that the cross-claim in interpleader of defendant, Robert H. Wallis, be dismissed and that he recover his costs and disbursements herein, and for such other and further relief as may be proper in the premises.

Dated October 18, 1946.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, A. V. Ammann, Individually and as Conservator for the Long Beach Federal Savings and Loan Association.

928 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion to strike and motion to dismiss by John H. Fahey
Filed Oct. 21, 1946

Comes now the defendant, John H. Fahey, and without waiving his claim on appeal to the Supreme Court that the decree of this Court filed herein on September 30, 1946, attempts to give all the relief prayed for in the complaint, and there being no order or stipulation extending the time to plead pending the appeal, and without waiving his objections heretofore made to the jurisdiction of the Court over the person of this defendant and to the venue, but specifically reserving the same, now moves the Court:

1. For an order striking from the files the answer and cross-complaint of the defendant, Long Beach Federal Savings and Loan Association, and as grounds therefor shows to the court:

(a) That said answer and cross-complaint is redundant and immaterial and is an attempt to assert a cause of action identical with that of the plaintiffs.

929 (b) That the relief sought by the defendant, Long Beach Federal Savings and Loan Association, is identical with that sought in its behalf by the plaintiffs in the original action, and one of the actions is therefor duplicitous.

2. That the cross-complaint of the defendant, Long Beach Federal Savings and Loan Association, be dismissed for the reason that it fails to state a claim upon which relief can be granted and for the reason that this defendant is an indispensable party to the action and service upon him in this action cannot be obtained in this jurisdiction.

3. To dismiss the cross-complaint of the defendant, Long Beach Federal Savings and Loan Association or in lieu thereof to quash the return of service of process on the grounds:

(a) That his official residence as Federal Home Loan Bank Commissioner is in the District of Columbia and for the purpose of said cross-complaint he is an inhabitant of the District of Columbia.

(b) That his residence as an individual is in the State of Massachusetts and that for the purposes of said cross-complaint he is, as an individual, an inhabitant of the State of Massachusetts.

(c) That said cross-complaint cannot be maintained against him in the State of California.

(d) That he has not been properly served with process in this action.

This motion is based upon the records and files of the above entitled action and the points and authorities attached hereto.

Dated October 17, 1946.

JAMES M. CARTER,
United States Attorney.
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney.
Attorneys for defendant, John H. Fahey, Individually and as Federal Home Loan Bank Commissioner.

930 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion to strike and motion to dismiss by A. V. Ammann

Filed Oct. 21, 1946

Comes now the defendant, A. V. Ammann, and, without waiving his claim on appeal to the Supreme Court that the decree of this Court filed herein on September 30, 1946, attempts to give all the relief prayed for in the complaint, and there being no order or stipulation extending the time to plead pending the appeal, now moves the Court:

1. For an order striking from the files the answer and cross-complaint of the defendant, Long Beach Federal Savings and Loan Association, and as grounds therefor shows to the court:

(a) That said answer and cross-complaint is redundant and immaterial and is an attempt to assert a cause of action identical with that of the plaintiffs.

(b) That the relief sought by the defendant, Long Beach Federal Savings and Loan Association, is identical with that sought in its behalf by the plaintiffs in the original action, and one of the actions is therefore duplicitous.

931 2. That the cross-complaint of the defendant, Long Beach Federal Savings and Loan Association, be dismissed for the reason that it fails to state a claim upon which relief can be granted and for the reason that John H. Fahey, Federal Home Loan Bank Commissioner, is an indispensable party to the action and service upon him in this action cannot be obtained in this jurisdiction.

This motion is based upon the records and files in the above entitled action and the points and authorities attached hereto.

Dated October 17, 1946.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, A. V. Ammann, Individually and as Conservator for the Long Beach Federal Savings and Loan Association.

932 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion to dismiss or in lieu thereof to quash return of service of summons by John H. Fahey

Filed Oct. 21, 1946

Comes now defendant, John H. Fahey, and without waiving his claim on appeal to the Supreme Court that the decree of this Court filed herein on September 30, 1946, attempts to give all the relief prayed for in the complaint, and there being no order or stipulation extending the time to plead pending the appeal, and without waiving his objections heretofore made to the jurisdiction of the Court over the person of this defendant and to the venue, but specifically reserving the same, now moves the Court:

1. To dismiss the cross-complaint of the defendant, Title Service Company, or in lieu thereof to quash the return of service of summons on the grounds:

(a) That his official residence as Federal Home Loan Bank Commissioner is in the District of Columbia and for the purpose of said cross-complaint he is an inhabitant of the District of Columbia.

933 (b) That his residence as an individual is in the State of Massachusetts and that for the purposes of said cross-complaint he is, as an individual, an inhabitant of the State of Massachusetts.

(c) That said cross-complaint cannot be maintained against him in the State of California.

(d) That he has not been properly served with process in this action.

2. To dismiss the cross-complaint of the Title Service Company on the grounds:

(a) That it does not state a claim upon which relief can be granted.

(b) That the Court does not have jurisdiction of the subject matter thereof.

This motion is based upon the records and files in the

above entitled action and the points and authorities attached hereto.

Dated October 17, 1946.

JAMES M. CARTER,
United States Attorney,
Ronald Walker,
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, John H. Fahey, Individually and as Federal Home Loan Bank Commissioner.

938 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Appellees' supplemental designation for additional portions of the record on appeal

Filed Oct. 24, 1946

To the Clerk of the United States District Court, in and for the Southern District of California:

The appellees, plaintiffs in the above entitled action, hereby file this, their Supplemental Designation for Additional Portions of the Record, which they desire to be included in the Record on Appeal.

It is requested that in addition to the portions of said record heretofore designated to be included in the record on appeal, that you include the following documents filed herein on or about October 21, 1946:

1. Notice of Motions by the defendants John H. Fahey and A. V. Ammann, individually, and in their representative capacity, as hereinafter listed:

939 2. Motion to Strike and Motion to Dismiss the Answer and Cross-Claim of the defendant Long Beach Federal Savings and Loan Association, by John H. Fahey, individually, and in his representative capacity. (Excluding Points and Authorities)

3. Motion to Strike and Motion to Dismiss the Answer and Cross-Claim of the defendant Long Beach Federal Savings and Loan Association, by the defendant A. V.

Ammann, individually, and in his representative capacity. (Excluding Points and Authorities)

4. Motion to Dismiss the Cross-Claim of the defendant Title Service Company or in lieu thereof to Quash Return of Service of Summons, by the defendant John H. Fahey, individually, and in his representative capacity. (Excluding Points and Authorities)

5. Motion to dismiss Cross-Claim and Interpleader of the defendant Robert H. Wallis, or in lieu thereof to Quash Return of Service of Summons by the defendant John H. Fahey, individually, and in his representative capacity. (Excluding Points and Authorities)

6. Motion to Dismiss the Complaint by John H. Fahey, individually, and in his representative capacity. (Excluding Points and Authorities)

7. Answer to Complaint by A. V. Ammann, individually, and in his representative capacity.

8. Answer to Cross-Claim and Interpleader of defendant Title Service Company, by A. V. Ammann, individually, and in his representative capacity.

9. Answer to Cross-Claim and Interpleader of defendant Robert H. Wallis, by defendant A. V. Ammann, individually, and in his representative capacity.

The foregoing are to be included in the Transcript of Record on Appeal to be filed in the Supreme Court of the United States.

This Supplemental Designation for Additional Portions of the record to make a complete Record on Appeal to the United States Supreme Court is filed pursuant to the Provisions of sub-division 2, of Rule 10, Rules of the Supreme Court of the United States.

Dated: this 24th day of October, 1946.

WESTOVER & SMITH,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for the Appellees and Plaintiffs.

941 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit of service by mail of appellees' supplemental designation for additional portions of the record on appeal, and order extending time

Filed Oct. 25, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Fay Dealey, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 215 West Sixth Street, Los Angeles 14, California; that on the 24th day of October, affiant served Appellees' Supplemental Designation for Additional Portions of the Record of Appeal on the Defendants in said action, by placing a true copy thereof in an envelope addressed as follows:

Federal Home Loan Bank of Los Angeles, c/o O'Melveny & Myers, its attorneys, 900 Title Insurance Building, Los Angeles 13, California.

942 Long Beach Federal Savings and Loan Association, c/o Charles K. Chapman, its attorney, Ocean Center Building, Long Beach 2, California.

Mr. John H. Fahey, Federal Home Loan Bank Commissioner, Federal Home Loan Bank Building, Washington, D. C.

Title Insurance Company, c/o Thomas & Wallace, their Attorney, Attention of H. O. Wallace, 602 Jergins Building, Long Beach, California.

Robert H. Wallis, c/o Raymond Tremaine, his attorney, Rm. 1007, Van Nuys Building, West Seventh Street, Los Angeles, California.

A. V. Ammann and John H. Fahey, c/o James M. Carter, U. S. Attorney, Atten: Ronald Walker, Asst. U. S. Attorney, 600 Federal Building, Los Angeles, California. and then by sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there

is delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

Fay Dealey,
By Fay Dealey.

Subscribed and sworn to before me this 24th day of October, 1946.

[SEAL] Maxine Laurel Berweiler.
Maxine Laurel Berweiler.
My Commission Expires Jan. 10, 1950.

943 In the United States District Court
Southern District of California, Central Division
Honorable Peirson M. Hall, Judge Presiding
No. 5421–PH, Civil

Paul Mallonee, C. H. Newhouse, and Winnie Bucklin, etc., plaintiff, *v.* John H. Fahey, individually, John H. Fahey as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, etc., et al., defendants.

Reporter's transcript of proceedings
Filed Oct. 15, 1946

Place: Los Angeles, California.
Date: July 1, 1946.

945 APPEARANCES

For the Plaintiffs: Westover & Smith, 215 West Sixth Street, Los Angeles 14, California; by Wyckoff Westover, Esq., and Steadman G. Smith, Esq.

For the Defendant Title Service Company: Thomas & Wallace, 602 Jergins Trust Building, Long Beach, California; by Harry O. Wallace, Esq.

For the Defendant Long Beach Federal Savings and Loan Association: Charles K. Chapman, Esq., Ocean Center Building, Long Beach, California.

For the Defendant A. V. Ammann, individually, and as Conservator: James M. Carter, United States Attorney, Los Angeles 12, California; by Ronald Walker and Mildred Kluckhohn.

For the Defendant and Cross-Complainant R. H. Wallis:

Raymond Tremaine, Esq., 210 West Seventh Street, Los Angeles 14, California.

For the Intervenor Home Investment Company of Long Beach: F. Henry NeCasek, Esq., 3233 East Anaheim Street, Long Beach 4, California.

946

LOS ANGELES, CALIFORNIA,
July 1, 1946; 10:00 o'clock A. M.

• • • • • •

The COURT. Is everyone ready in the Mallonee, Newhouse, Bucklin, etc., Long Beach Federal Savings and Loan Association v. Fahey, Federal Home Loan Bank Board, A. V. Ammann and others?

Mr. WESTOVER. Ready for the plaintiff.

Mr. CHAPMAN. I believe we are all ready, your Honor.

The COURT. I will take that matter up now. Someone had an ex parte motion in that.

Mr. NECASEK. In that matter, your Honor, we have a motion, the Home Investment Company of Long Beach, a corporation, for leave to file a complaint in intervention. The purpose of this complaint, your Honor, is to eventually obtain an order of this Court to secure the reconveyance of 174 trust deeds for the purpose of paying the money and securing the reconveyances. The trust deeds were deposited in the court by the trustee named in the trustee, Title Service Company, who was also a party-defendant to this action. They were deposited here with the request that the Court determine whether or not the reconveyances should be issued or on whose request and how the money was to be paid.

Now the company whom I represent had the situation advanced to this point at the time the Conservator
947 was appointed. The association had agreed to take the money, which involves approximately $850,000, and secure reconveyances. They had secured other commitments from another lending institution and trust deeds had been recorded, but due to the fact that they are unable to secure the reconveyances the titles cannot be guaranteed and they are unable to secure the money.

The purpose of them securing the money is for this reason: They want to pay off this incumbrance and secure new loans and increased amounts on the 174 homes for the

purpose of securing additional funds to build houses in which they have commitments for 900 Title 6 G. I. homes. They need this additional financing to complete those homes.

In addition to that, out of these 174 houses, approximately 40 of them have been sold, half of them to G. I.'s, where they are being refinanced through the Veterans' Administration and the Veterans' Administration is unable to obtain reconveyances, we are unable to give them reconveyances, and we are unable to accept their money, and as a consequence a good many veterans and others are being deprived of housing.

This situation not only involves the Home Investment Company of Long Beach but involves every financial institution in the city of Long Beach. I have made a check of numerous of the institutions, the Bank of America, Security-First National Bank, Farmers and Merchants Bank,
948 and I find they have over a hundred escrows and loans pending in which they are attempting to secure reconveyances through the Federal Building and Loan Association, and they are unable to secure these by reason of the fact that the Title Service Company, who is a defendant in this action, and the Long Beach Federal Savings and Loan Association, under the direction of Mr. Ammann, are unable to secure the reconveyances. It is a situation that I believe behooves everybody to work out a solution of, and for that reason I am filing a motion here this morning asking leave to file a complaint in intervention and a request that I may have an order to show cause on the parties involved here so that I can secure immediate relief.

We do not care to intervene in the action for the purpose of any subsequent litigation that might arise; we are merely asking for the relief of securing these trust deeds.

I have discussed this with all parties in interest and I believe I have the waivers this morning of all parties defendant and plaintiff to permit me to file this complaint in intervention.

The Court. You mean waivers of notice?

Mr. Nee'asek. Waivers of notice. I haven't them signed at the present time, but all parties have consented that they would stipulate in open court that I may file them.

The Court. Are all parties who have heretofore appeared in that action present?

949 Mr. NeCasek. All parties are, your Honor.

The Court. Do you have a record of who has appeared, Mr. Clerk?

The Clerk. The only ones I have are on the calendar, your Honor.

The Court. Title Service Company, Thomas & Wallace, by H. O. Wallace.

Mr. Wallace. Mr. Wallace speaking. There is no objection to the proposed motion.

The Court. Raymond Tremaine, attorney for defendant and cross-complainant R. H. Wallis.

Mr. Tremaine. Raymond Tremaine speaking. No objection.

The Court. Charles K. Chapman, attorney for Long Beach Federal Savings and Loan Association.

Mr. Chapman. Chapman speaking. No objection.

The Court. James M. Carter, United States Attorney, by Ronald Walker and others.

Mr. Walker. No objection. That is, as to the defendant Ammann we will waive any notice of the motion. I know of no objection to the motion itself. I have not as yet had an opportunity to read it.

The Court. By the way, you are appearing specially in this case on a motion to dismiss, are you?

Mr. Walker. I believe so.

The Court. For lack of jurisdiction, or is it a

950 general appearance?

Mr. Walker. General appearance on behalf of the defendant Ammann. As to Mr. Fahey, there seems to be some question whether he has or has not yet been served, or we anticipate that we will move to quash service on him if the service has been made. But no appearance as yet has been made on Mr. Fahey and I do not at this time wish to make such appearance by waiver of notice. I think the motion in interpleader is proper.

In that connection, I might state that the Conservator has in each case requested the trustee that the reconveyances be issued. Certainly it is proper that they should be, to permit Mr. NeCasek's plans to come out whole.

The Court. Let me see the motion.

(The document referred to was passed to the Court.)

The COURT. Are there any other appearances in that matter?

Mr. WESTOVER. Westover speaking for the plaintiffs. We have no objection to the intervention, I might say in response to counsel.

The COURT. You mean you waive notice?

Mr. WESTOVER. We waive notice; that is right.

The COURT. And you have no objection to the intervention?

Mr. WESTOVER. We waive notice of the motion.

951 I might say in that connection that we were orally requested to join in a mutual stipulation of all parties that the money be deposited in lieu of the trust deeds to relieve this situation, and we would have no objection to that provided all parties join in it, including Mr. Fahey.

The COURT. In view of the waiver of notice and the waiver of any objection made by all parties appearing to date, the moton to file a complaint in intervention is granted.

Mr. NECASEK. If I may ask at this time, I would like permission to file a petition for an order to show cause on the defendants Ammann as Conservator and the Title Service Company, to show cause in this court on some set date as to why they should not issue reconveyances.

The COURT. Let me see. Would that involve any issue that is raised which requires the three-judge court?

Mr. WESTOVER. I believe it would, your Honor. It would involve the same question of the validity of the original appointment, whether or not the act under which the Conservator was appointed was a valid and constitutional act within the provisions of the constitution.

Mr. WALLACE. On behalf of the Title Service Company, the trustee in the matter, as an interpleader we have no active interest in it, but we believe, that the adjudication as to the petitions under which reconveyances may be made would involve the constitutionality of

952 the acts which are here in dispute, and therefore require adjudication by a three-judge court.

The COURT. That is, it will require a prior adjudication?

Mr. WALLACE. That is right.

The COURT. It will not require the sitting of a three-judge court to hear this order to show cause, would it?

Mr. WALLACE. In my opinion it will; yes, sir.

The COURT. It will?

Mr. WALLACE. Yes, sir.

Mr. NECASEK. The only matter I am here for is the question of the delay that will result in this and the damage that will be done, not only to ourselves but to everybody involved that has a trust deed. That is a $26 million organization, with over 8000 trust deeds, and a good many of them are people who are attempting to pay off and securing other refinancing, and a good many are going through the Veterans' Administration, and if the matter is delayed it will make a very serious situation in regard to the financial structure of the city of Long Beach, and prevent people from obtaining what is rightfully due from the Association and from the officers of the Association. We are caught, you might say, in the middle of this situation. We are innocent bystanders who are going to be hurt. For that reason I respectfully request the Court to take that into consideration and give us immediate relief.

953 Mr. CHAPMAN. Chapman speaking for the Association which was taken over. The action of this court will involve the validity of the title of these properties and will present a constitutional question requiring the three-judge decision. If there is any defect anywhere in the procedure, the title companies may not continue to insure the titles as they now are and you wouldn't have any relief, Mr. NeCasek.

The COURT. You mean if there is any defect in the procedure by which he might get the relief he is asking?

Mr. CHAPMAN. That is right, your Honor.

The COURT. What if this suit hadn't been filed, could he then have secured release of the trust deeds and payment of the money?

Mr. CHAPMAN. He could not, your Honor, unless the Title Service Company continues to take the risk upon itself of determining the validity of the Conservator's appointment. If they issued reconveyances and it turned out the Conservator had no power, they would be indi-

vidually liable to the beneficiaries on $12 million worth of trust deeds.

Mr. NeCasek. Your Honor please, we are willing to deposit the money, you understand, in the register of the court and take out reconveyances.

The Court. Take your reconveyances from whom?

Mr. NeCasek. From the Title Service Company or whoever is supposed to furnish them.

954 I don't see how anybody could be hurt on a situation of that kind as far as the trust deeds are concerned. Now they are really dead property. They are in the custody of the court. My clients do not feel like they can pay any money on them because they can't get what they are entitled to until the money has been offered, but they can't keep depositing all this money and secure anything. The Court should determine where that money should go. The money can be held here under the order of the Court, and then if the Conservator is adjudicated to be the Conservator then it will be turned over to him, if it isn't it will be turned over to the officers of the Long Beach Federal Savings and Loan Association.

The Court. It seems to me we are talking about something that is not before the Court.

Mr. Wallace. I was about to say, in answer to the Court's inquiry as to whether or not the matter would have come up without the filing of this litigation, and in regard thereto I would say that we have been presented with cross demands, first by the Conservator on the one hand, and then the Long Beach Federal Savings and Loan Association, the beneficiary, on the other hand, one demanding reconveyances and the other one forbidding reconveyances without liability and damages. So even without the litigation now pending we would have interpleaded. So I believe the matter would have come up either way, whether it had been on the action now pending or

955 not.

As Mr. NeCasek says, if the United States Attorneys are in a position to stipulate to a deposit in the registry of the court in lieu of the deeds of trust, I think the matter could be worked out, and I will counsel my clients to execute the reconveyances under the deeds of trust.

The COURT. I was about to observe that we are talking about something that is not before the Court. You are simply stating orally that you intend to apply to this Court for an order to show cause.

Mr. NECASEK. Yes, your Honor.

The COURT. When you have the appropriate petition and——

Mr. NECASEK. I have a petition on file, your Honor, at the present time.

The COURT. The petition is on file?

Mr. NECASEK. The petition is on file.

The COURT. It was just handed to the Clerk?

Mr. NECASEK. I just handed it to the Clerk. There are three documents there; one is a petition for an order to show cause, to which a copy of the complaint is attached.

The COURT. Do you offer herein to make the deposit in court? It isn't your deposit, is it?

Mr. NECASEK. It is our deposit. We will have the money available to deposit in this court at any time the Court desires and we can get the reconveyances.

956 In fact, we can deposit it today if we are sure of the reconveyances.

The COURT. Your reconveyances are desired only from the Title Service Company?

Mr. NECASEK. That is right, your Honor.

The COURT. Your reconveyance requires no action on the part of the Conservator?

Mr. NECASEK. The only thing he has to do, we have to be assured that his demand for the amount is met before the title company will guarantee the titles. In other words, if his demand is met and the reconveyances are issued, then we are assured to the title company that they will guarantee the proceedings. We would have to have the Conservator make his demand in court here showing the amount due, plus interest and cost. We had computed it at one time at about $839,000, but since then there is some additional interest that has accumulated and that would have to be computed.

The COURT. I think I would like to look this over before I indicate any order on it. I have pending another application filed this morning for intervention which I left in

chambers. I have the matter of the setting of this whole case. So instead of going ahead with the setting this morning, I will continue all proceedings in this case of Mallonee v Fahey until 2:00 p. m. this afternoon, which I hope will give me some time to look these matters over and also to find out who the three-judge court is
957 going to be so that I can fix a date for hearing. As a matter of fact, it would be more preferable to me, if it is not too great an inconvenience to counsel, if this matter could be continued until tomorrow morning at 10:00 o'clock.

Mr. NeCasek. That would suit me much better, your Honor.

Mr. Westover. I am required to be in Sacramento tomorrow morning on another matter, your Honor. I am very sorry. I understood this was only a setting matter.

The Court. It was only a setting matter, but now it appears to involve a number of different matters.

Mr. Tremaine. If the Court please, I am engaged in a criminal proceeding tomorrow morning.

The Court. Can you all be through by Wednesday?

Mr. Wallace. In that regard, may it please the Court, if we are going over until 2:00 o'clock, I was going to invite your attention to a pending motion that we have but have not yet noticed, to restrain a proposed and purported administrative hearing which is set for next Wednesday. I believe there is a companion motion also on the calendar this morning on behalf of the plaintiffs. That matter was sufficiently urgent because the administrative hearing, the subject matter of it, is set for Wednesday, the day after tomorrow.

The Court. You say you haven't noticed it?

Mr. Wallace. No, your Honor. There is a companion motion in which we anticipate asking leave to join orally.

958 The Court. That motion is noticed?

Mr. Wallace. The companion notice is noticed.

The Court. What is the purpose of the administrative hearing? Does that involve the consolidation of the banks, the matter which is now enjoined, or does that involve other proposed action by the Conservator?

Mr. Walker. It doesn't involve in any way any pro-

posed merger. Under the regulations, a Conservator may be appointed. The Association may then request a hearing. That is part of the due process that we contend for in the act. The hearing then is as to the factual background justifying the appointment of the Conservator. It is an administrative remedy permitted under the act to the association over whom a Conservator is appointed.

The COURT. And you would object to this motion?

MR. WALKER. Most strenuously.

The COURT. I think that is all the more reason that I had better put it over until 2:00 o'clock, or maybe until 3:00 o'clock, if we are going to get into a few more matters.

MR. WALKER. There will be from two to five, your Honor.

The COURT. I will put it over until 3:00 o'clock this afternoon.

MR. WALKER. Your Honor, one other matter, Mr. Ammann, the Conservator, is here under subpoena. I know of no reason why any testimony would be required of
959 him today. It is important that he be at the Association and I wonder if he could be excused. I don't know what the purpose of subpoenaing him was.

The COURT. Who subpoenaed him?

MR. WESTOVER. We did, and we would like Mr. Ammann available whenever the matter is to be heard. He is in and out of town so much that we said we had better catch him while we had him available

If counsel will assure us that he will respond to the subpoena whenever your Honor sets the hearing date, why we have no objection.

Furthermore, they have a motion this morning to dismiss that is noticed for this morning, not only just for setting but noticed.

The COURT. That was the idea, that all matters would be at issue as of today so that I could set the matter before a three-judge court.

MR. WESTOVER. But if that motion was to be heard we would want him here.

The COURT. It would not be heard this morning as it obviously requires a three-judge court.

MR. WALKER. We would be glad to have Mr. Ammann available any time his testimony is needed.

The COURT. I am quite sure I wouldn't desire to take

any oral testimony on any of the matters now pend-
960 ing, and I would have to consult with whoever the other two judges are going to be on the matter of taking testimony and evidence at any hearing at all, so I do not think it would be necessary for Mr. Ammann to be back this afternoon. He may be excused.

Mr. WALKER. Thank you, your Honor.

961 LOS ANGELES, CALIFORNIA,
July 1, 1946; 4:15 o'clock p. m.

(In chambers.)

The COURT. The matters here are the setting for hearing on plaintiffs' motion for a preliminary injunction——

Mr. WESTOVER. There are two of those, one for the merger and one for the administrative hearing, both on notice.

The COURT. The one on the merger is the main motion?

Mr. WESTOVER. That was the first one; yes, sir.

The COURT. Which brings at issue the constitutionality of the act?

Mr. WESTOVER. That is right.

The COURT. Then there is the setting for hearing on motion of defendant Long Beach Federal Savings and Loan Association for a preliminary injunction on oral testimony; setting for hearing on motion of A. V. Ammann to dismiss; setting for hearing on motion of the plaintiffs for a preliminary injunction to restrain the holding of an administrative hearing.

Now in addition to that you have Mr. NeCasek's petition for an order to show cause as to why a deposit in court should not be made.

Then there is another motion for taking of oral testimony. Whose motion is that?

Mr. CHAPMAN. That was my motion first for the defendant Long Beach Federal Savings and Loan.

962 The COURT. Why do you want to take it on oral testimony?

Mr. CHAPMAN. We think that is the only way that the good faith and motives of the defendants in taking over the institution can be inquired into, and we have cited an authority from one of the Circuit Courts in our points and authorities that so holds, that where the good faith of the judge, or so-called administrative officer, is brought

into question he should be personally present in court for cross examination.

The COURT. Do you have to have a three-judge court to pass on good faith, or is good faith a ground for setting aside an order appointing a conservator?

Mr. CHAPMAN. We think where the motives are being inquired into, as we have alleged here (and so far it hasn't been denied), that it was done maliciously, without authority and for a destructive purpose of their own, that that is one of the things that can be inquired into.

The COURT. Is that a matter that requires a three-judge court?

Mr. CHAPMAN. Not necessarily, not unless the rest of the case requires it. But the rest of the case has to be heard by a three-judge court, so we think this also has to be heard.

The COURT. It has also to be heard?

963 Mr. CHAPMAN. That is my opinion.

The COURT. But the whole case does not need to be heard by a three-judge court, only the question of the constitutionality of the law requires the three-judge court.

Mr. CHAPMAN. That is true, but we think that this case cannot be decided without deciding the constitutionality of that law.

The COURT. But the three judges will pass upon the constitutionality of the law and then if the law is constitutional, that disposes of it—does or does not dispose of the other matter?

Mr. CHAPMAN. Does not dispose of it, in my opinion, because we have asked not only for a——

The COURT. If it is not constitutional, then it disposes of the other matter.

Mr. CHAPMAN. That is true.

The COURT. Without any hearing.

Mr. CHAPMAN. That is true. But I think this point also arises, that there is an application for a preliminary injunction. That may be granted or denied on grounds other than constitutionality. There is an application for a permanent injunction which will require a three-judge court on the trial of this issue.

The COURT. The application for the temporary injune-

tion, the injunction pendente lite, raises the ques-
964 tion of constitutionality.

Mr. Westover. That is of the injunction, yes, as distinguished from the restraining order.

The Court. That is right. In other words, a temporary restraining order is what it is in effect, so that your basic issue of law on the constitutionality is raised on the application for an injunction pendente lite.

Mr. Westover. Yes, your Honor.

The Court: And that is the only thing that requires the three-judge court, the issue of constitutionality.

Mr. Westover. Yes.

The Court. That is the only thing.

Mr. Westover. I hesitate to say that is the only thing. The statute is that they cannot grant an injunction where the constitutionality is in question without a three-judge court.

The Court. Well, I can set all these matters for hearing now on July 15th, which is Monday, in the afternoon at 2:00 o'clock. I have a case set for the 16th. What case is that, Mr. Clerk?

The Clerk. Hankin v Clayton is set for that date, unless they settle it.

The Court. I think this case would have to take precedence over the patent case.

Mr. Westover. Your Honor, might I just recall to your Honor one additional point here, that Mr. Fahey's
965 time to respond has been set as of August 19th.

The Court. That is his time to plead.

Mr. Westover. Yes.

The Court. That is not his time——

Mr. Westover. He was served also with the same notice of motion at the same time.

The Court. Yes. That is his time to plead.

Mr. Westover. That is right.

The Court. He has filed a motion to dismiss.

Mr. Westover. No.

The Court. No?

Mr. Walker. No.

Mr. Westover. He has done nothing.

Mr. Walker. We anticipate, however, filing a motion to quash.

Mr. WESTOVER. He has taken no steps at all.

Mr. TREMAINE. That is the reason we were talking to his counsel.

The COURT. That being the case, unless the administrator joins with Ammann's motion to dismiss on the 15th there would have to be a subsequent hearing by the three-judge court after August 19th.

Mr. WESTOVER. That is what we are afraid of.

Mr. WALKER. We are awaiting final instruction as to our position. We can't say at this time.

966 The COURT. I think it would suit the convenience of the judges if that could be done. I had a great deal of difficulty getting three judges together. I have canvassed every judge here among the other seven judges and I have also canvassed all the judges in the Northern District of California and I only managed to obtain the judge from Arizona because he was over here visiting.

Mr. WALKER Judge Ling?

The COURT. Judge Ling. So if you cannot dispose of it on that date we will be confronted with probably travel time and other difficulties. If we could proceed with whatever is to be decided by the three judges at that time, those matters can be heard and decided.

Mr. WALKER. I think so.

The COURT. That will be the order then, setting the plaintiffs' motion for a preliminary injunction, motion of the Long Beach Federal Savings and Loan Association for a preliminary injunction, motion of Ammann to dismiss—is there a motion to quash filed?

Mr. WALKER. Not yet.

The COURT. You will file it?

Mr. WALKER. I anticipate doing so; yes.

The COURT. So that upon the statement by the United States Attorney that a motion to quash will be filed on behalf of Ammann——

967 Mr. WALKER. On behalf of Fahey.

The COURT. And on behalf of Fahey, that will also be set at that time and noticed.

Do all parties waive notice on that?

Mr. WALLACE. The Title Service Company waives notice.

The COURT. Is there anybody here who does not waive notice of the hearing of the motion to quash?

Mr. WESTOVER. I would rather have notice on the motion to quash. I would like to see it.

The COURT. All right. It will be set for that date and the customary 10 days notice will be given. However, if the chairman of the Federal Home Loan Bank Board, Mr. Fahey, files a motion to dismiss on that day, can that determination be made so as to give the customary notice of 10 days?

Mr. WALKER. We would have to file our notice by the 5th. I think we can do that.

The COURT. You can reach that conclusion by that time?

Mr. WALKER. Yes.

The COURT. So that the service will be on all parties, together with your points and authorities and the grounds, and they will have 10 days notice to get ready.

That leaves the hearing on the motion of plaintiffs for a preliminary injunction to restrain the holding of an administrative hearing.

Mr. WALLACE. May I call your Honor's attention to the fact that the intervenor Title Service Company has a similar motion on file and not yet noticed, and I have here also to press, which has just been presented, a motion for temporary restraining order which is parallel to that of the plaintiffs.

The COURT. That is a recitation of all motions which have been made and matters pending, is that correct?

Mr. WALLACE. The intervention I suppose has been disposed of already?

Mr. WESTOVER. Does that include our motions for temporary restraining orders, or are you going to take those up next?

The COURT. On the administrative hearing?

Mr. WESTOVER. Yes.

The COURT. I was going to take that up now. I granted the petition to intervene this morning on behalf of Home Investment Company of Long Beach.

Mr. NECASEK. That is correct.

The COURT. There is another petition here for leave

to intervene filed by Home Investment Company of Long Beach.

Mr. CHAPMAN. There is a petition for bringing in third party-defendants filed by myself for the defendant Long Beach Federal Savings and Loan Association. That has been filed ex parte because it was before the filing of our answer.

The COURT. "If third party-defendants (Federal Home Loan Banks) are not made defendants in this
969 action, a separate further action will be required against them for the same property and involving the same questions of fact and law." Why is that true?

Mr. CHAPMAN. We understand the Federal Home Loan Banks named there have received from the Conservator some $5,000,000 to $7,000,000 worth of our notes and trust deeds since the Conservator took us over. We know that they had between $5,000,000 and $6,000,000 in our United States Government bonds at the time we were taken over. The Conservator has purported to withdraw bonds for them or to deal with them. It brings up the same question involved throughout the proceedings, whether the Conservator has been validly appointed, whether he can pull down our bonds and spend the proceeds and use them, or whether he can borrow money or assign our trust deeds to these other defendants. They are all within the jurisdiction of this Court, and there is a third party summons there in the exhibits which we seek to have served upon them.

The COURT. Is there anybody that has any objection that they know about the preliminary matters?

Mr. WALKER. Not having seen it, and not knowing what it is all about, I can't very well object.

Mr. CHAPMAN. The matter is an ex parte matter under Rule 14.

The COURT. I will grant the order bringing
970 them in. You are not asking any temporary restraining order on that?

Mr. CHAPMAN. I have not, your Honor.

The COURT. Now you have here a motion for an order upon absent defendants.

Mr. WESTOVER. That follows the motion first for temporary restraining order re the hearing, your Honor.

The COURT. Re the administrative hearing?

Mr. WESTOVER. Yes.

The COURT. Plaintiffs move this Court for an order requiring the absent defendant Fahey, etc., to appear, move, answer or default on the plaintiffs' motion for a preliminary injunction to restrain the holding of an administrative hearing. If your administrative hearing is going ahead Wednesday, how can I order service upon the absent defendant, which must be 60 days?

Mr. WESTOVER. If your Honor please, I think that my first point is that of our motion for a preliminary injunction restraining the administrative hearing.

The COURT. I haven't set that yet.

Mr. WESTOVER. That I think would have to come up first. Now if the hearing on that motion, which is on notice, is set prior to the third, we don't need this temporary restraining order. But if it is set after the third, which in view of the circumstances I couldn't see how it could be done otherwise, then we are asking
971 for a temporary restraining order to withhold the administrative hearing, to have that continued or held off or stayed to keep it in status quo until we have had an opportunity to be heard on our preliminary injunction re the administrative hearing. That can be granted ex parte, of course, by any one of the judges.

The COURT. How can this motion for an order on absent defendants be handled?

Mr. WESTOVER. Well, then if that was granted, your Honor, I felt the point might be raised—well, we would need some order on Mr. Fahey, who has not yet appeared or answered in the matter—and therefore I would offer this motion next in order. In other words, your Honor is taking them up in reverse order. I sent them in to your Honor in view of the fact that you asked to look the matters over a little bit between this morning and this afternoon.

Mr. WALLACE. And we would ask leave orally to join in that motion on behalf of the intervenor Title Service Company.

The COURT. Here is what I had in mind, next taking up consideration of issuing a temporary restraining order forthwith restraining the hearing now set for Wednesday,

and at the same time setting the hearing on that pendente lite for July 15th. How then can I between now and July 15th get service upon the absent defendant Fahey, when he requires 60 days notice?

Mr. Westover. If your Honor please—I don't
972 know—of course I had no way of knowing just what date your Honor was going to pick for the setting of the three-judge tribunal, so I did not give particular thought to the 60-day period. But certainly Mr. Fahey, at least we want to be in a position to offer to have him served, or if your Honor cares to shorten time on it why of course we would be happy to so move.

The Court. Where is the motion and the notice of motion to restrain the administrative hearing?

Mr. Westover. That is in the main file, your Honor. That was filed on the 20th of June.

Mr. Wallace. Our motion to the same effect was not filed until the past Friday, so I have no notice as yet.

The Court. Notice of motion for a preliminary injunction to restrain the holding of an administrative hearing.

Mr. Westover. I might say, your Honor, that we mailed that on the same day to Mr. Fahey in Washington, not on the theory that it was necessary, that it gives us jurisdiction of service, but simply on the theory of giving at least all the notice we can.

The Court. This notice was served upon Ammann, is that right?

Mr. Walker. That is right.

The Court. And James M. Carter?

Mr. Walker. Yes.

The Court. And you are appearing for him?
973 Mr. Walker. Yes.

The Court. And you are here today in response to this notice of motion, among other things?

Mr. Walker. That is correct.

The Court. You do not ask here for a temporary restraining order.

Mr. Westover. Not on that particular motion, your Honor. I filed a motion for the temporary restraining order later. That is an ex parte motion.

The Court. This has not been served?

Mr. WESTOVER. No, that I am just making now. That is an ex parte order and I have just made it today.

Mr. WALLACE. And in which we would like to join. I have a set here to file.

The COURT. Have you served them?

Mr. WALLACE. No, sir.

The COURT. Will you serve them?

Mr. WALKER. Your Honor is aware of the fact that Ammann as Conservator has no position in the administrative hearing whatever.

Mr. CHAPMAN. We disagree with that statement.

Mr. WALKER. He doesn't conduct the hearing or anything like that.

Mr. CHAPMAN. The hearing determines his authority as to whether he was properly appointed or not.

974 Mr. WALKER. An injunction against him would not restrain the hearing.

Mr. CHAPMAN. We don't know who the hearing officer is.

The COURT. Who am I going to restrain then?

Mr. WESTOVER. We have set that forth in the restraining order, your Honor, at some length.

Mr. WALLACE. "* * * the defendants, John H. Fahey, individually, John H. Fahey, as chairman of the Federal Home Loan Bank Board, A. V. Ammann, individually, and A. V. Ammann, as purported Conservator for the Long Beach Federal Savings and Loan Association, and any and all of their agents, employees, servants, conservators, hearing officers, and subordinates * * *"

Mr. TREMAINE. Your Honor, on behalf of the defendant R. H. Wallis, cross-complainant, I would like to join in this motion for a restraining order also on the administrative hearing. The intervenor is quite interested. In other words, the attempt is being made here to hold anybody who purports to act for the defendants in holding such a hearing as it is obviously impossible to name them in advance.

Mr. WESTOVER. I might say, your Honor, we are following somewhat the practice——

The COURT. Where is the affidavit in support of this motion?

Mr. WESTOVER. Of the preliminary injunction?

975 They are attached to the motion.

The COURT. No, on the administrative hearing.

Mr. WESTOVER. On the administrative injunction or the restraining order?

The COURT. On the restraining order.

Mr. WESTOVER. Attached to the motion, right behind it.

The COURT. I would be disposed to grant a temporary restraining order and then set it for hearing on the same date as all of the other matters before the three-judge court.

Mr. WALKER. May I be heard on that?

The COURT. I think that a three-judge court would have to pass on it the same as the others, but I do think that the matter ought to be preserved in status quo as much as possible.

Mr. WALKER. I can see your Honor's position in the matter. However, there are some points that I would like to urge. I suppose I will simply repeat them at the final hearing.

The COURT. That is all right.

Mr. WALKER. One is a question of damages or proper showing of any damage resulting to these persons who are asking the restraint. In other words, we have to look at the whole picture.

The officers of the Long Beach Federal Savings and Loan Association, the primary party in interest, have requested this administrative hearing. All of the parties here
976 today are arguing vigorously that there is no due process, and that is one of the reasons that the law is unconstitutional. Now this is a very part and parcel of this due process. In other words, while we will say it is maintaining the status quo, it is almost, as the result of the order of the Court, a denial of the Long Beach Federal Savings and Loan Association of the due process to which they are entitled under the rules and regulations.

Another point which they urge is that they have had no notice and as parties cannot take part in this hearing. I have here a copy of the notice which was published in the Federal Register on June 6, 1946, and reading from it: "It is further ordered that any person, partnership, association or corporation claiming to have an interest in the subject matter involved may at any time before the close of the hearing file a petition for leave to intervene at said hearing."

Now in addition to that there are several cases here,

which I would be glad to cite to your Honor, which hold that the judiciary will not interfere with the executive party in such an administrative hearing, that there is nothing to review until after the hearing is over.

The COURT. I think generally that is the case, but the only idea I have in mind now which would induce me to issue the temporary restraining order is that it simply holds everything until on July 15th the whole matter
977 can be argued out and presented before the three judges, and so that the matter will be in precisely the same status as it is now, so far as any act of the administrator is concerned.

Mr. WALKER. It will maintain the status of the status quo, and I have no very serious objection, except for the time and expense in preparing for this administrative hearing.

The COURT. So I would be disposed to grant that.

On the matter of the due process, the whole matter can then be gone into on July 15th. In other words, if I now refuse to grant the temporary restraining order, it would seem to me that I would be invading the province of the three-judge court. That is to say, I would be arrogating to myself, as one judge, an adjudication that it was proper to hold a hearing, and that is what the whole argument is about, that none of these proceedings are proper, so the only thing it appears to me that I can do is to save it.

Mr. WALKER. I am wondering what the position of the Long Beach Federal Savings and Loan Association is. They are represented by counsel.

Mr. CHAPMAN. We asked for the hearing and we ask that this be continued until the three judges can pass upon the other matters.

The COURT. You do not now desire to have a temporary restraining order?

Mr. CHAPMAN. We do very emphatically desire to
978 have a temporary restraining order.

The COURT. Is there anyone here outside of the defendant administrator and various officers of the Farm Loan Bank who objects?

Mr. WALKER. May I ask a question of counsel? Do you withdraw, on behalf of the Association, the request for an administrative hearing?

Mr. CHAPMAN. No, we would like to get someone whom we consider has not already prejudged us to hear the question of whether we should be seized and confiscated or not. When we applied for this hearing we hadn't heard the congressional committee testimony and we hoped we might get someone impartial. After the congressional hearing you announced back there that we would never get our association back. That has not been denied. That has been put in the record here. We certainly do not intend to submit to that kind of a hearing unless your Honor or someone orders us to.

Mr. WALKER. I assume counsel does not include me in the congressional hearing.

Mr. CHAPMAN. No, but if you would read the matter that is before his Honor and which was served upon you as to the testimony of the officials of your institution, and what they have decided, ou will know what I am talking about.

The COURT. I do not see anything in the affidavit about that.

979 Mr. CHAPMAN. The original application to the preliminary injunction has copies of the testimony before the congressional committee, your Honor.

Mr. WALKER. Again I can't quite get this clear. Is counsel withdrawing his request for the administrative hearing or is it counsel's position that he wants it continued until after the Court decides?

Mr. CHAPMAN. After the Court has determined the constitutionality. We are not withdrawing the request for a fair hearing before an impartial tribunal, but we certainly are not satisfied to go to the people who have seized us and have announced to Congress that we will not get our association back.

The COURT. The long and short of it is that you do not withdraw your request, you only request that it be postponed until after the hearing of the three-judge court, and for that reason you now join in the request for the temporary restraining order?

Mr. CHAPMAN. That's it exactly.

The COURT. Does everybody else here join in the request?

Mr. WALKER. With the exception of the attorneys for Ammann.

The COURT. With the exception of the United States Attorney and those parties represented by him.

980 Does everybody join? Do you?

Mr. SILVERMAN. I have no interest in it, your Honor.

The COURT. Where did you come from?

Mr. SILVERMAN. I just walked in.

The COURT. What is your name?

Mr. SILVERMAN. My name is Silverman, S-i-l-v-e-r-m-a-n.

The COURT. How about you?

Mr. SMITH. I am associated with Mr. Westover.

Mr. WESTOVER. This is Mr. Smith of our firm.

The COURT. Do you join?

Mr. WALLACE. We are on record; yes.

Mr. TREMAINE. Also the defendant and cross-complainant R. H. Wallis.

Mr. CHAPMAN. I represent the Long Beach Federal Savings and Loan Association.

Mr. TREMAINE. I represent the defendant and cross-complainant Wallis.

The COURT. W-a-l-l-i-s?

Mr. TREMAINE. Yes.

The COURT. How about you?

Mr. NECASEK. We have no interest.

The COURT. Where is your temporary restraining order?

Mr. WESTOVER. It is right there.

Mr. WALKER. Might I inquire who is being restrained, if we are going to have an order of restraint?

981 Mr. CHAPMAN. You will have to disclose who the hearing officer is.

Mr. WALKER. My point is, it isn't up to us.

Mr. TREMAINE. Is it a secret as to who the hearing officer is?

Mr. WALKER. We are not certain that a hearing officer has been named, but he will be named and he will be here.

Mr. DOUGHERTY. I think I can give that information by tomorrow.

The COURT. In any event, I will issue this order and they will have to take care of the service and if they do not get it served, that is their fault.

Mr. WESTOVER. I think that has been done before in other cases, your Honor.

The COURT. You have not given a copy of that notice here in your affidavit, have you? I do not find it.

Mr. WESTOVER. A copy of what?

The COURT. Notice for the hearing.

Mr. WESTOVER. That is in the file here attached to the motion to dismiss filed by the Government officials. That was the only way we knew about it.

Mr. WALKER. The affidavit attached to our motion to dismiss.

Mr. WESTOVER. They gave a photostatic copy, your Honor.

Mr. WALKER. If it is the notice itself that you
982 are looking for, I have it right here.

(The document referred to was passed to the Court.)

Mr. WALKER. As far as the notice goes, it was published in the Federal Register.

The COURT. I do not like to make a finding here "that the holding of said proposed administrative hearing and the resultant publicity therefrom might cause to recur the 'run' and/or the excessive withdrawals from the defendant Long Beach Federal Savings and Loan Association * * *" It seems to me that there is a sufficient ground in that it is to preserve the status quo to prevent multiplicity of suits.

Mr. WESTOVER. Very well, your Honor. Any changes of course your Honor wishes to make is entirely agreeable.

The COURT. I will strike that out on page 2 of the order, lines 7 to 13. Let me see. I cannot make this more than 10 days.

Mr. WESTOVER. I think, your Honor, the 10-day part arises in Section 381 of Title 28, Section 380 (a), and I believe that gives your Honor sufficient jurisdiction. If not, of course we will ask it for 10 days and then ask for renewal. The latter part of Section 380 (a) I believe is the part. I took that to mean if your Honor sets the two for hearing at the same time that they can run to whatever date that is.

The COURT. Yes, I think I can continue it until then. How about bond?

983 Mr. WESTOVER. Whatever your Honor says. I think before your Honor set a bond for costs.

The COURT. That is about all the damage that could occur. About $2,500?

Mr. WESTOVER. All right. One additional point, your Honor, that my partner suggested to me in striking out this paragraph, lines 7 to 13 on page 2, we struck out the general finding of damage and injury to plaintiffs. I believe that that should come in maybe interpolated in the next paragraph, "and would constitute irreparable damage and injury to plaintiffs," or some similar language.

The COURT. Interpolate on line 18, after the word "court," the language "and would cause immediate and irreparable injury to plaintiffs and others."

And then on the next page, page 3, line 7, "that the same shall expire at 6:00 o'clock p. m. on the 15th day of July," at which time the matter of a motion for injunction pendente lite to restrain the administrative hearing is also set.

"It is further ordered that the answering defendant Long Beach Federal Savings and Loan Association not having heretofore been served by defendant A. V. Ammann or his counsel with notice of motion to dismiss and supporting docu ents, the said defendant shall be served with said notice of said motion to dismiss and sup-

984 porting documents." Why is it necessary to include that in this order?

Mr. WESTOVER. That was not mine.

The COURT. This says Westover & Smith.

Mr. WESTOVER. I am sorry. Pardon me just a minute. I didn't follow your Honor.

The COURT. Why is it necessary to have that order directing Ammann to serve the Long Beach Savings and Loan Association?

Mr. WESTOVER. I thought, your Honor, there were numerous motions being made before your Honor today, that in order to set the date, that should be done.

The COURT. This is setting all motions. I will interpolate on line 22, page 2, "and each of them is and are hereby continued to and set for hearing."

Mr. WESTOVER. Fine.

The COURT. Then the other is not necessary as long as you put that in.

Mr. WESTOVER. I thought your Honor might wish to separate it.

The COURT. I do not think that is necessary.

Mr. WESTOVER. Very well.

The COURT. Now this is the order setting all of these matters for hearing on July 15th except the matter by Mr. NeCasek. Now on the motion for order upon absent defendants——

985 Mr. WESTOVER. That, your Honor, would be in connection with the restraining of the administrative hearing.

The COURT. That is set for hearing on July 15th.

Mr. WESTOVER. That is right. Therefore I would think that we would have an order to serve upon Mr. Fahey beyond the jurisdiction of this Court pursuant to provisions of Section 118, this all still dealing with the property here in California.

The COURT. That is Section 118 of Title 28?

Mr. WESTOVER. That is right, your Honor.

The COURT. I doubt if this applies to an interim order.

Mr. WESTOVER. I admit, your Honor, that there was some doubt in my mind, but I felt that if there was any doubt I had better offer the order so Mr. Fahey would have at least as much notice of all of these proceedings as we can give him.

The COURT. Do you have any views on that?

Mr. WALKER. As I recall the section, it doesn't deal with this sort of action at all. This started our being an action to remove a conservator and for an injunction. Now, in an attempt to gain jurisdiction an interpleader was filed in the nature of a quit title proceeding or an attempt to bring it in under this section. I don't conceive that the section covers this action at all. I think it is merely an attempt in the guise of getting it into the jurisdiction of this court.

986 The COURT. In any event, it does not appear to me that it applies to it because it says they shall have time to "appear, plead, answer or demur." Now this is not a final order.

Mr. WESTOVER. My feeling was that it certainly could do no harm, and we were perfectly willing to give him all the notice we could.

The COURT. Then you can give it to him voluntarily.

Mr. WESTOVER. Very well. We will do so.

The COURT. That disposes of all matters except the motion that started all this this morning, is that correct?

Mr. WALLACE. As far as I know.

Mr. CHAPMAN. As far as I know.

The COURT. Are there any other motions or orders that have not been set for hearing or disposed of? (No response.)

On this matter that we discussed in the absence of a reporter, now that the reporter is here I think that I will state what I understand to be the position of the parties.

The petitioner here seeks to substitute in cash a sum of money in lieu of trust deeds and notes heretofore deposited with the Clerk of the court amounting to some sum in excess of $800,000. He seeks by his proposed order to show cause an order requiring one of the defendants, the Title Service Company, the trustee in each and all of the trust deeds and under the notes, to issue
987 reconveyances upon the deposit of money in court, the petitioner here being the payor of all of the notes upon which the trust deeds are based.

Is that correct?

Mr. NECASEK. That is correct.

The COURT. The Conservator has heretofore deposited with the Title Service Company demand for reconveyances.

Mr. WALLACE. That is correct, sir.

The COURT. The Long Beach Federal Savings and Loan Association, contesting the validity of the appointment of the Conservator, nevertheless agrees to likewise deposit with the trustee under the trust deeds and notes, the Title Service Company, a demand for reconveyances.

Mr. CHAPMAN. Provided in that demand, your Honor, we can make the reservation that we in no way recognize the validity of the Conservator's action, and that the money is to be deposited in court subject to the order of this Court, not that the money is to be paid to the Conservator.

The COURT. This is only a request to deposit the money in court. It goes no further than that?

Mr. NECASEK. No?

Mr. WALLACE. That is my understanding.

Mr. CHAPMAN. That is correct.

The COURT. So I would not be considering anything beyond that.

Mr. CHAPMAN. One additional point we would
988 like to make, the reservation is our request—I will draw it up and submit it to counsel and to your Honor also—that this proceeding, being taken in the absence of Fahey, one of the defendants in counter-claim and interpleader, is not to prejudice the process now running against him. I understand he has been or will be served with an alias summons requiring him to appear in this interpleader. We do not want the substitution of the money for the trust deeds to in any way interfere with what ever jurisdiction the Court applies.

The COURT. That is a matter of law that exists or does not exist.

Mr. DOUGHERTY. I may say that an alias summons was delivered to Mr. Fahey in Washington at 3:50 Eastern Standard Time today.

Mr. CHAPMAN. On this cross-claim and interpleader?

Mr. DOUGHERTY. I think it was on Mr. Wallace's interpleader.

Mr. WALLACE. An alias summons?

Mr. DOUGHERTY. Yes, I think so.

Mr. CHAPMAN. How about the alias summons on the interpleader Title Service Company?

Mr. DOUGHERTY. At the time I received this telephone message I didn't know of that.

Mr. WESTOVER. I was going to ask, if I might, have you any information as to an alias summons issued and
989 given to the marshal here on the 7th of June?

Mr. DOUGHERTY. I have not.

Mr. WESTOVER. On the original action for service and transmittal for service upon Mr. Fahey by the marshal in Washington?

Mr. DOUGHERTY. No.

Mr. WALKER. Apparently there was some confusion in the papers delivered to the marshal. I talked to the marshal's office some time ago and they said that one—I don't know which one—that one of the papers for service here had been sent to Washington and the papers for service in Washington were here, and so forth. That may

be the reason for the delay in affecting service on Mr. Fahey.

Mr. WESTOVER. I didn't hear of that. That is the first I heard of it, your Honor.

The COURT. In any event, I do not see how that can possibly affect this matter.

Mr. CHAPMAN. With those reservations, your Honor, if we can do that——

The COURT. I do not think that your demand or reconveyance on its face should contain any conditions or reservations. I gathered the understanding, while you stated so in the absence of the reporter this afternoon, that you finally agreed to deposit on behalf of the Long Beach Savings and Loan Association an unconditional reconveyance, as if you were conducting business without the intervention of the Conservator or the administrator or anybody else.

990

Mr. CHAPMAN. Can we then have our conditions in the order that the Court makes? We certainly don't want to in any way release the process that is being served upon Mr. Fahey and has been served upon him. We have no objection to the substitution taking place.

The COURT. I do not see how it can release or affect the process in any way at all. This is merely an interim matter. I made the suggestion this morning, in order to eliminate from this hearing the necessity for a three-judge court and in order to protect the interests of people who were getting caught between the hither and nether millstones.

Mr. CHAPMAN. Could that reservation be in the order or anywhere so that at any time——

The COURT. I think it exists as a matter of law.

Mr. CHAPMAN. I appreciate that.

The COURT. In other words, without waiving any rights attacking the validity of the appointment, you simply request a reconveyance.

Mr. CHAPMAN. Then the condition that the money is to be deposited in court is not to appear in our request but to appear in the Court's order, or where is it to appear?

The COURT. I cannot make an order beyond what they have requested now unless at the time of the hearing, in the interest of justice, it appears to be necessary.

991

Mr. CHAPMAN. I see.

The COURT. It seems to me that your execution of an unconditional request for reconveyance could have no other effect than to permit the deposit of this money in court. If an order were attempted to be made at that time then it would require—that is, other than to deposit the money in court—then it would require a three-judge hearing.

Mr. CHAPMAN. I see. That is what we wish to avoid. I appreciate that. Your thought is that we are to make an unconditional request for reconveyance without receiving the money but on the assurance that the money goes into court.

The COURT. You make an unconditional request for reconveyance.

Mr. CHAPMAN. Yes period.

The COURT. Then the Title Service Company makes an unconditional request for reconveyance from warring factions?

Mr. CHAPMAN. Yes.

The COURT. If you are right, what is the difference? If the Conservator is right then yours does not make any difference.

Mr. WALLACE. In the meantime—if I may interject—by what mechanics will the money be transferred from the escrow through which the payoff is being had into the registry of the court?

992 Mr. WALKER. Who has that escrow?

Mr. NECASEK. There is no escrow. All they have to do is go to the Bank of America.

The COURT. I do not know anything about any escrows. From the face of this order the petitioner comes in and says, "I have $800,000 plus. I want to pay that off and get my trust deeds. Help us." Now that is all he is asking for.

Mr. CHAPMAN. He pays that money into the registry of the court.

The COURT. If I attempted to make an order permitting him to pay it to the administrator, I would then be invading the province of the three-judge court.

Mr. WALKER. It does raise one serious objection. I stated before the reasons why the Conservator and administrator feel that they cannot stipulate or take any affirmative action in this matter.

The Court. I do not want you to now. I am just getting up to the point where you can object. All I am trying to do is decide whether to set it before a one-judge court or a three-judge court. If they are going to insist upon conditions, reservations or requirements that the Court must pass upon the validity of the Conservator's request for conveyance, then I am going to set it before a three-judge court. If he will make his request for reconveyance unconditional and file it with the trustee I will then
993 set for hearing one week from today the order to show cause as to why the deposit should not be made in court and the trust deeds taken out and a reconveyance effected.

Mr. Walker. It is the mechanics that was bothering me.

The Court. At that time you can urge whatever objections you have to the merits. The only thing I am going to do now is to set this for hearing.

Mr. Walker. My thought was that if it is in escrow or in the hands of some third party, it is going to require affirmative instructions.

The Court. He says it is not.

Mr. NeCasek. No, it is not.

The Court. I do not know anything about any escrow with any third parties.

Mr. Chapman. Who are to be the parties to the order to show cause? Is Mr. Fahey to be one of them?

Mr. Walker. I should guess that he would be one of them.

The Court. Where is your proposed order to show cause?

Mr. NeCasek. I had an order to show cause but it will have to be changed, your Honor. I have some changes to make in view of changes that have taken place here today.

The Court. This apparently is an order against everybody to show cause.

Mr. NeCasek. The order to show cause is directed to the United States Attorney, A. V. Ammann, individually and as Conservator of the Long Beach
994 Federal Savings and Loan Association.

Mr. Chapman. How do you expect to dispose of one of the defendants to the cross-claim and intervention?

Mr. NECASEK. At the time I prepared the order I was under the impression that there was going to be the admission of entry or appearance here for Mr. Fahey, at least special appearance for the purpose of hearing this order.

The COURT. Well, the petition in intervention I have already made an order granting leave to file that petition.

Mr. NECASEK. I was going to suggest on page 2, line 8—I left that blank—"It is hereby ordered that the petition in intervention be filed, that the above named plaintiffs and the defendants show cause before me.".

The COURT. I don't know Fahey has not yet appeared in the action. I think that I made the order ex parte permitting the deposit of the money in court, which I think the court has the power to do. I do not know that Fahey would have to be served with this.

Mr. WALLACE. Your Honor, we have an agency proposition that enters in there as to whether or not the Conservator is merely an agent of the principal or whether he is the principal himself. As I said in the absence of the reporter; we have no proof of any kind other than Mr. Ammann's own signature that he is the Conservator. It appears upon the request of reconveyance executed by him and deposited in court. But as to who he is, we have no information at all.

995

The COURT. There is a motion here to dismiss, isn't there?

Mr. WALKER. There is a motion to dismiss; yes.

The COURT. Doesn't that concede that he is the Conservator?

Mr. WALKER. It certainly concedes it on my part.

Mr. SMITH. He admits that he is Conservator in that motion and for the purpose of the motion the appointment would have to be admitted, but for the purpose of these other matters I don't see that the admissions which would be necessary in the argument of the motion would have any application.

The COURT. For the purposes of any orders made in this action——

Mr. SMITH. It is merely a self-serving declaration. In other words, Mr. Ammann admits he is the appointed Conservator, but he rest of us do not.

Mr. CHAPMAN. We are trying to proceed in the absence of a named defendant who is called in to present claims to this fund. He has already presented certain of them and we are asking him to present them in court. If the Court, acting in rem, gives him any notice then I think the action is valid, but if we ignore him and do not pretend to make him a party to deal with this $800,000,
996 I don't think we have done it validly. I am going 100 per cent with the Court on the unconditional request for reconveyance, but we want our protection against the money. It takes the place of the trust deeds. I see your point that the innocent people have to be released.

The COURT. What protection?

Mr. CHAPMAN. My thought would be that he should be a party to the order to show cause. The Court would shorten time or have it heard on the 15th or 22nd and have it served on him in the meantime. If he chooses to default the proceedings in rem the money is here and he has waived what rights he has. If he wants to come in and assert his claims, he has a notice of opportunity to be heard.

The COURT. I thought I would set this for July 9th, a week from today. Counsel indicates that there is some considerable urgency in connection with the matter in delaying the trading and dealing of real estate in Long Beach, or did I misunderstand you?

Mr. NECASEK. It is certainly true. It is a very serious situation. It not only affects the civilians but it affects a considerable number of G. I.'s who are waiting. I could by air mail serve a copy of this petition on Mr. Fahey.

Mr. CHAPMAN. And the order to show cause.

Mr. NECASEK. And the order to show cause and the petition.

997 Mr. WESTOVER. If your Honor please, may I suggest that under the section I believe your Honor has nationwide jurisdiction, particularly in this pleading specifically upon all parties to the fund.

Mr. CHAPMAN. In the interpleader you have jurisdiction, there is no question about that.

The COURT. His order then is all right under your theory, "it is hereby ordered that the above named plaintiffs and defendants."

Mr. CHAPMAN. Including Fahey.

The COURT. It does not say including Fahey to show cause.

Mr. CHAPMAN. Fahey is one of the named defendants in this proceeding. He is certainly a party-defendant in the complaint in intervention. What method shall we take to serve process on him so he has some notice before the Court makes the order changing the trust deeds?

Mr. NECASEK. I said: "It is further ordered, that copies of this order and said petition and complaint be served upon the above named plaintiffs and defendants by service of a copy thereof on Messrs. Westover & Smith, attorneys for the plaintiffs; Messrs. Thomas & Wallace, attorneys for defendant Title Service Company, a corporation; Raymond Tremaine, attorney for Robert H. Wallis; Charles K. Chapman, attorney for the
998 Long Beach Federal Savings and Loan Association; James M. Carter, United States Attorney at Los Angeles, California; and A. V. Ammann, individually and as Conservator of the Long Beach Federal Savings and Loan Association, at least.....days before the time fixed for showing cause."

Mr. WESTOVER. He has not covered all the defendants in his method of service. That is the point. We have never seen this order before until he read it to us just now. If he would add how he proposes to serve Mr. Fahey, by mail or air mail, or something.

Mr. CHAPMAN. I think your Honor can make an order shortening the time just so he has notice before the order is made changing the trust deeds to money. In an interpleader proceeding you certainly have nationwide jurisdiction. But we would like to have some notice to Fahey.

The COURT. Who are the defendants left out?

Mr. WESTOVER. John H. Fahey, both individually and as chairman of the Federal Home Loan Bank Board, as originally set up in the original pleading.

The COURT. That can be added.

Mr. WALKER. That is an erroneous designation, but I don't know that we are concerned with that here.

The COURT. That can be added.

Mr. TREMAINE. You mean he is the whole board?

Mr. WESTOVER. Maybe we should say, I have since learned counsel is correct.

999 Mr. DOUGHERTY. Home Loan Bank Commissioner.

Mr. WESTOVER. There is no board any more, it is just a one-man proposition?

The COURT. Is there any other defendant absent from this list? Have you served copies?

Mr. NECASEK. No, I haven't submitted copies.

The COURT. You might do that.

Mr. TREMAINE. The objection seems to be to this order because it does not name Fahey in the provision for service on him.

Mr. CHAPMAN. I suggest that you name him here as you named him in the complaint and intervention and have the Court provide for service upon him in Washington by the Federal marshal by air mail, without going through the marshal here, simply as a proceeding in rem.

Mr. NECASEK. Would service by mail be sufficient?

The COURT. I do not know. You can make the interlineations that you think appropriate and I will dispose of it.

Is this the original?

Mr. NECASEK. That is the original.

The COURT. I was going to suggest "upon the defendant by service of a copy thereof by mail." Where is his office in Washington? What street address?

Mr. DOUGHERTY. Mr. Fahey's street address would be
1001 Indiana Avenue. If you want the building name——

1000 The COURT. This will get to him, 101 Indiana Avenue, Washington, D. C.

Mr. DOUGHERTY. That is right.

The COURT. "And by mailing a true copy of said petition, complaint and order by registered air mail addressed to John H. Fahey, individually and as chairman of the Federal Home Loan Bank Board, 101 Indiana Avenue, Washington, D. C., not later than noon tomorrow.

Mr. DOUGHERTY. I may say that that is not the correct designation and it wouldn't be the correct address that way. It should be sent to John H. Fahey, Federal Home Loan Bank Commissioner.

The COURT. As Commissioner?

Mr. DOUGHERTY. Federal Home Loan Bank Commissioner.

The COURT. As Federal Home Loan Bank Commissioner.

Now on this other matter, on the date, my impression of the urgency of it is that it ought to be heard as soon as possible before the three-judge hearing. I will set this then for the 8th of July at 2:00 o'clock p. m.

I have signed the original order here. If you will take your copy now you can get the correct version of it.

On line 10, strike out "in Department.....of this court at the" and insert over "at the" the word "in," so that it will read "in Courtroom No. 3 thereof * * * on the 8th day of July, 1946, at 2:00 o'clock p. m."

1001 In line 17 after the word "thereof" insert "by mail on or before 6:00 p. m. July 2, 1946."

On line 23, after "Long Beach Federal Savings and Loan—that isn't where that insertion really goes—after the word "Association" on line 24, strike out all the rest of that line and insert the following: "and by mailing a true copy of said petition, complaint and order by registered air mail addressed to John H. Fahey, individually and as Federal Home Loan Bank Commissioner, 101 Indiana Avenue, Washington, D. C., not later than July 2, 1946, at 12:00 o'clock noon."

Mr. NEASEK. Thank you.

(Whereupon, at 6:00 o'clock p. m., the hearing was adjourned.)

1002 [Reporter's certificate to foregoing transcript omitted in printing.]

1003 In the United States District Court,
Southern District of California, Central Division
Honorable Peirson M. Hall, Judge Presiding
No. 5421–PH Civil

Paul Mallonee, C. H. Newhouse, and Winnie Bucklin, etc., plaintiffs *v.* John H. Fahey, individually, John H. Fahey as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, etc., et al., defendants

Reporter's transcript of proceedings
Filed Oct. 23, 1946

Place: Los Angeles, California.
Date: July 8, 1946.

1005 APPEARANCES

For the Plaintiffs: Westover & Smith, 215 West Sixth Street, Los Angeles 14, California; by Wyckoff Westover, Esq., and Steadman G. Smith, Esq.

For the Defendant Title Service Company: Thomas & Wallace, 602 Jergins Trust Building, Long Beach, California; by Harry O. Wallace, Esq.

For the Defendant, Long Beach Federal Savings and Loan Association: Charles K. Chapman, Esq., Ocean Center Building, Long Beach, California.

For the Defendant A. V. Ammann, individually, and as Conservator: James M. Carter, United States Attorney, Los Angeles 12, California; by Ronald Walker, Assistant United States Attorney.

For the Defendant and Cross-Complainant R. H. Wallis: Raymond Tremaine, Esq., 240 West Seventh Street, Los Angeles 14, California.

For the Intervenor Home Investment Company of Long Beach: F. Henry NeCasek, Esq., 3233 East Anaheim Street, Long Beach 4, California.

1006 Los Angeles, California;
July 8, 1946; 2:00 o'clock P. M.

The Clerk. Mallonee v. Fahey; hearing on order to show cause.

Mr. NeCasek. Ready for the intervenor.

The Court. Let us get the parties appearing here. Will counsel state their name and state the name of the party for whom they are appearing.

Mr. Wallace. Harry O. Wallace, Title Service Company.

Mr. Chapman. Charles K. Chapman, for defendant Long Beach Federal Savings and Loan Association.

Mr. Tremaine. Raymond Tremaine for defendant and cross-complainant R. H. Wallis.

Mr. Westover. Wyckoff Westover, Westover & Smith, for the plaintiffs.

Mr. Walker. Ronald Walker, Assistant United States Attorney, for A. V. Ammann, individually, and as Conservator of the Long Beach Federal Savings and Loan Association.

Mr. NeCasek. F. Henry NeCasek, attorney for the plaintiff in intervention, Home Investment Company of Long Beach.

The Court. Very well.

I have two matters here in connection with this hearing. First of all is an order, which I will hand to the Clerk for filing by the Senior Circuit Judge designating
1007 Hon. Albert Lee Stephens as the United States Circuit Judge and Hon. David Ling as the other District Judge to participate with myself in the hearing and determination of the matters now set for July 15th.

I wish to call the parties' particular attention to the fact that this order requires, pursuant to the provisions of the statute, that the hearing and determination shall not be heard or determined before at least five days' notice of the hearing has been given to the Attorney General and to such other persons as may be defendants in the suit.

Now all parties were present at the time I set this for hearing, but I nevertheless think that the statute should be complied with by the formal notice.

Mr. Chapman. May I be heard a moment on that, your Honor?

I believe the civil rules require three days in addition if notice is given by mail. Notifying the Attorney General at this time of the hearing on the 15th will not

comply with the 5-day provision unless the Court should shorten the time.

The COURT. This provision was in the previous order which was made which heretofore designated Judge McCormick as the other District Judge. Has any party given formal notice to the Attorney General?

Mr. CHAPMAN. I have, your Honor, but I don't know that it would be within the time. Mine was mailed
1008 Friday. Aside from the three days, we would have the five-day time.

Mr. WESTOVER. I mailed mine last Wednesday.

The COURT. That would be more than eight days.

Mr. WALLACE. The defendant Title Service Company has made no service.

The COURT. Are you seeking no relief on the date of that hearing?

Mr. WALLACE. Yes, we have joined in the motion for the restraining of the administrative hearing by filing written notice, but there has been no notice of that motion made.

The COURT. You have joined in the other motion?

Mr. WALLACE. We have joined in the other motion and filed a formal written motion and service of that motion was made upon the United States Attorney.

The COURT. Upon the defendant Wallis?

Mr. TREMAINE. No notice has been given, but the only thing in his behalf was joining in the motion for the restraint of the administrative hearing. So I think the notice given by the moving party would be sufficient.

The COURT. The restraining of the administrative hearing I think is a matter which requires the three-judge court as well. However, I do not know that the statute would be interpreted so broadly that everybody who joined in the particular motion would have to give the notice. The important thing is that notice was given.

1009 Mr. TREMAINE. That is what I would assume, your Honor.

The COURT. Yes. What about your client? He is not joining?

Mr. MCCASEK. We are not asking for any relief from a three-judge court.

The COURT. Very well.

There is one other matter that I would like to bring up before we take up the matter today. The Los Angeles Examiner on July 2nd carried a story in it which was completely incorrect. I checked with the editorial department of the Los Angeles Examiner as to the origin of the story. It did not originate from this building, nor from the regular beat reporter, nor did it originate from myself nor from any attache of the court. The same day the Los Angeles Evening Herald and Express carried a story to the same general effect and purpose, both of which put this court in a false light.

The paragraph in the Examiner story is as follows:

"Scheduled by Federal Home Loan Commissioner John H. Fahey, the hearing would be a 'kangaroo court' benefiting only Fahey and offering no relief to others involved, Judge Hall held."

The Los Angeles Herald and Express story likewise, upon checking with them, I find that this did not originate from the beat man or the regular news-gathering sources in the Federal Building, and needless to say it did not originate from me or any attache or the court:

"Judge Hall, when issuing the order yesterday, declared the scheduled hearing would be a 'kangaroo court' benefiting only Commissioner Fahey and offering no relief to others involved."

The only conclusion which I can reach is that some zealous litigant here has presumed to make a statement, probably originally to the Examiner, and knowing something of the habits of newspapers, the Herald story is probably a recap from the morning edition of the Examiner, that somebody has released such a statement to the newspapers or to the public. As all of counsel know, I neither declared nor did I hold or say or intimate anything to the effect that the hearing would be a " 'kangaroo court' benefiting only Commissioner Fahey and offering no relief to others involved," or anything of the same or similar nature. If this were true, it would be an exceedingly serious matter and would probably be considered a disqualification of any judge who, in advance, would pretend to pre-judge the matter which is now set for

hearing and was set for hearing before a three-judge court at the time these stories appeared in the newspapers.

I want to call this to all counsel's attention. I will write, and each of you will receive in a few days, a letter enclosing a copy of these two stories with a request that you disclose whether or not anyone had anything to
1011 do with releasing stories of this nature. Upon receiving your replies I will give the matter further consideration, and if any action is indicated to be taken by way of contempt or reprimand or otherwise, I will consider the matter at that time.

Are we ready to proceed now?

Mr. WESTOVER. If your Honor please, I would like the record to show that I called your Honor instantly upon seeing that.

The COURT. Yes; that is correct.

Mr. WESTOVER. And without further time or consideration I can assure you that such matters did not emanate from our office at all. I checked as far as I could and it did not emanate from the plaintiffs' side in the matter so far as I know at all.

Mr. CHAPMAN. Without waiting for any letter, your Honor, I also wish to state that I knew nothing of this and had no part in it.

Mr. WALLACE. And I would like to likewise advise the Court at this time that this is the first notice that I have had of even the existence of the story, and that neither myself nor my office had any part in any such release.

Mr. TREMAINE. As long as statements are being given, this is the first I had ever heard of the story. I did not give it and I checked with my client in the meantime and he did not release any story on that occasion.

1012 The COURT. I have heard of ghost writers. I guess there must be one here. But newspapers do not get stories like that out of the air. Somebody, usually an accredited beat man, turns in a story, which did not happen in either of these cases, or somebody plants a story with a paper. I do not know whether that was true in this case, but presently it has all the earmarks of a planted story of someone who wished to bias and prejudice the hearing which was set. The function of the three

judges is to determine the validity of the hearing and, as counsel knows, I took particular pains to strike out of the order that was submitted to me some matters which might have been considered improper or pre-judgment, and all I did was to stay the proceedings until the three judges could be here.

Very well. We will proceed in the hearing on this matter today.

By the way, is there any opposition to the motion? Has there been any formal opposition filed?

Mr. WALKER. There has been no formal opposition filed on behalf of the defendant Conservator. I believe that each of the other parties have stipulated.

I am in the position of not being able to consent to it, and I will await the appropriate time to state my reasons for it. I think each of the other parties indicated at the informal hearing last week that they would stipulate
1013 or consent to the entry of the order.

The COURT. This motion today is a motion on behalf of the Home Investment Company of Long Beach to deposit with the Clerk some $800,000 in payment of the trust deed notes now held by the Clerk, and in lieu and in substitution for the trust deeds to deposit that cash to be held subject to the further order of the Court.

Have I correctly stated your motion?

Mr. NECASEK. That is a correct statement, your Honor.

The COURT. The Conservator, I understand, has filed with the trustee, Title Service Company, requests for reconveyances on all of the trust deeds involved, is that correct?

Mr. WALKER. That is correct, your Honor.

The COURT. At the hearing in chambers last week I understood from counsel for the defendant Long Beach Federal Savings and Loan Association that the appropriate officers of the Long Beach Federal Savings and Loan Association would also file a request for a reconveyance with the trustee under the trust deeds.

Mr. CHAPMAN. We have such reconveyances ready, your Honor. My understanding was that they were to be filed with the Clerk of the court pursuant to the Court's order. We have them ready for such filing upon the Court making its order.

The COURT. Appropriately executed?

1014 Mr. CHAPMAN. Yes, your Honor, all except as to the date.

The COURT. I do not know that they should be filed with the Court. I think they should be filed with the trustee.

Mr. CHAPMAN. The reconveyances from the Conservator are already on file in this action, your Honor, as are the deeds and the notes of trust.

The COURT. Are the requests for reconveyances here on file?

Mr. WALLACE. The requests for reconveyances were deposited in the interpleader. In filing the interpleader we deposited the promissory notes, deeds of trust and requests for reconveyances executed by the Conservator. As yet there has been no request for reconveyances on behalf of the named beneficiary, the Long Beach Federal Savings and Loan Association.

Mr. CHAPMAN. Those are prepared and are ready to be filed when the Court so orders it.

The COURT. My purpose in bringing this up, as I indicated to all of you, was to enable the machinery of the business to continue because, upon the representations of the parties, I understood that there were some 174 trust deeds that interest could not be paid on, loans could not be paid off, construction work is stopped, and the loaning of money is stopped. At my suggestion the request for reconveyances of the Association has been prepared. It would seem to me that in view of the aim that is try-

1015 ing to be accomplished here, that it should be served in accordance with the terms of the trust deeds. If it is necessary that under the terms of the trust deeds they be served upon the trustee, then I think it ought to be served upon the trustee because the aim is to enable the title to these properties to be cleared so that they may be handled and negotiated. If the trustee then desires to deposit that in court——

Mr. WALLACE. On behalf of the trustee, your Honor, I may have misunderstood your Honor at the conference last week, but as I understood it, it was anticipated that the requests for reconveyance executed by and on behalf of the Long Beach Federal Savings and Loan Association would be deposited with the Clerk of the court pursuant

to your order, following which the actual reconveyances would also be deposited with him with instructions to deliver.

The COURT. Very well, if that will clear the title. Have you the requests for reconveyances there?

Mr. CHAPMAN. I have the requests for reconveyances awaiting the Court's order.

The COURT. Let us file them with the Clerk.

Mr. CHAPMAN. We have left the date blank. Do you wish to take the time and fill in the date now, or shall we file them in blank.

The COURT. I think you had better fill them in because the Clerk is not authorized to alter them.

1016 Mr. CHAPMAN. It will take us about 15 minutes, if we may have that time.

The COURT. All right. They are considered tendered for filing.

Does the Title Service Company make the assurances that the Title Service Company will recognize these requests for reconveyances and issue reconveyances upon the deposit of the money in court?

Mr. WALLACE. And upon the Court making the order that we do so. Yes, your Honor. As a matter of fact, they have physically been prepared and will be ready for filing within an hour.

Now in view of that state of the record, does anybody have any objection to making the order?

Mr. NECASEK. There is one thing further, your Honor. I have the prepared statement of the Conservator of the Long Beach Federal and Loan Association as to the total amount of principal and interest due, and it has been submitted to the attorneys for the Long Beach Federal Savings and Loan Association and I believe they will stipulate as to the total amount being due.

Mr. CHAPMAN. The total amount was disclosed to us just a little while ago when this document was shown to me. There are some 174 items, the correctness of which we have had no chance to check.

1017 As to the totals, there is a slight disagreement, just a few dollars, but we are not going to consider that. We will go ahead and accept the total figure as satisfactory, but we cannot agree as to how correct it may

be as to detail, and as to what importance that may have is for you to determine.

Mr. NeCasek. I am not interested in that. The order doesn't set forth the details, only the total amount due, plus interest from a certain date.

The Court. That is an amount of $774,927.50.

Mr. NeCasek. To and including June 30th.

The Court. Plus $95,217 a day?

Mr. NeCasek. That is $95,217 per day. They figure it down to mills.

The Court. Are you prepared to make the deposit now?

Mr. NeCasek. We have the money. The money is here. He hasn't got the actual cash. He will have to get a cashier's check.

The Court. I do not think the Clerk can accept a cashier's check. How about that?

The Clerk. Yes, they will.

The Court. I thought you could not.

The Clerk. Not on fines, but in a case like this we can.

The Court. I think you had better check.

Mr. Chapman. It could be provided for, your
1018 Honor, if you wish, by holding everything in until the check has cleared. We would have no objection to that. It would only be a day or so.

The Court. The Clerk has numerous rules and regulations which somebody else prescribes for him known as the Accounting and Investigating Officer for United States District Clerks.

Mr. NeCasek. If your Honor please, the man with the money says he wouldn't be able to get to the bank to get a cashier's check today, but he can deposit it with the Court or bring up the money, but we would have to have an armored car to bring up the money.

The Court. We will wait until the Clerk comes back and see what he finds out.

Then this amount is accepted by all parties as correct, subject to any errors in addition?

Mr. NeCasek. I have made a provision in the order to take care of that, that the Court retains jurisdiction to make any corrections.

Mr. Westover. On behalf of the plaintiffs, we have not checked it nor had any opportunity to. We are not object-

ing to the amount in any way, but I don't want to stipulate that that is the correct amount without knowing or having had any figures to work on.

Mr. WALKER. In that connection, I might state
1019 that those figures were just given me and I supplied them to Mr. NeCasek. In his order as he has it prepared, I believe it does provide for any correction if discrepancies should develop.

Mr. CHAPMAN. Our stipulation was only as to the total.

The COURT. The Clerk says that he will accept the check. Now I understand there is some objection you wish to state.

Mr. WALKER. I suppose, your Honor, that the statement I wish to make is in the nature of an objection, and I should perhaps preface it by saying that I personally feel that the petitioner in intervention here is entitled to relief. The objections are twofold: In the first place——

The COURT. Instead of calling them objections, why not call them expression of your reason for lack of consent?

Mr. WALKER. Will the reporter include that at the beginning of my remarks then.

We have interposed objections by way of motion to dismiss to the interpleader suit itself. One reason for my inability to consent is that it might be putting my client in the position of recognizing the validity and submitting to the jurisdiction of the Court. That I cannot do.

The COURT. Very well.

Mr. WALKER. The other reason for my lack of consent is that the Conservator does not wish to be put in the
1020 position of jeopardizing the financial position of the Association, which he might do if he consented to the impounding of the fund. The Association must remain liquid in order to meet the demands upon it. There have been heavy withdrawals. I do not believe, frankly, that this sum would put it in the position of being not liquid so that it might necessarily have to be liquidated.

However, it is conceivable that it might, and it is also possible that this might establish a precedent for further deposits made in a similar way which would amount to tying up all the available assets of the Association to where it could not meet the demands for withdrawals.

The Conservator did not wish to be put in the position

of consenting to it, so that my statement is really a shift of the burden. I wanted to advise the Court that that might conceivably happen. We will, of course, submit to your order.

Mr. CHAPMAN. I would like to be heard on this question, this making the Association insolvent. We understood we had $11 million in Government bonds when we were taken over. You certainly can't tie up all the assets here on an $800,000 transaction.

The COURT. I do not think that counsel was testifying when he made the statement. He was merely assigning his reasons for not consenting. I do not think that that
1021 is at issue at the present time. There is no formal showing nor any formal objection that it will make it insolvent.

Mr. NECASEK. If your Honor please, the only purpose for my request for these parties to consent to this decree is this: I have been in conference with Mr. Johnston, general counsel of the Title Insurance & Trust Company, and there is a question of the title company guaranteeing these loans, which we naturally have to have if they are guaranteeing the titles, and of course naturally I would appreciate it if I could get a consent decree here, otherwise we may have to wait for a period of time for this decree to become final. I would like to ask the Court if this is an appealable order that the judge is signing today.

The COURT. I would like to be able to answer that, but I notice that my brethren on the Circuit Court write majority and minority opinions on whether orders are or are not appealable orders, so I am not prepared to say that this is or is not.

Mr. NECASEK. If this Court would so hold, that it is not an appealable order, I don't believe there would be any objection by anybody here and it would enable the title company to immediately insure these titles.

The COURT. I am not prepared to so hold at the present time because, in the first place, I have no notions about it and, in the second place, to so hold would indicate
1022 a disposition to put my orders beyond review by a higher court, which I do not think should be done.

Mr. NECASEK. Let me ask counsel if they will waive the right of appeal.

Mr. CHAPMAN. I would like to know what the order is before I do that.

The COURT. Here is a copy of something that has been handed up, affidavit of mailing, order to show cause, and petition.

Mr. NECASEK. There is the full story there.

The COURT. Do you wish this schedule filed with the Clerk?

Mr. NECASEK. Yes.

The COURT. Very well. That will be filed.

Mr. NECASEK. There is a copy of the proposed order there too, your Honor.

Mr. WALKER. In that connection, your Honor, this amounts only to a subs-itution of money for paper, and the title company is certainly fortified by the fact that the requests for reconveyances have come from both of the interested parties.

The COURT. Well, I would think so, but I discovered a long time ago that arguing with title companies is like arguing with your wife. They are right when they start and they are right when you get through.

Mr. NECASEK. I discussed it with both Mr.
1023 Ogden, Mr. Johnston and Mr. McKeever this morning, and that was their opinion. They wanted the consent order.

The COURT. You mean arguing with them is like arguing with your wife?

Mr. NECASEK. I did not get any place.

The COURT. Is there any objection to the form of this order?

Mr. WALLACE. There is one very minor one, your Honor. It appears on page 5, at line 4.

It is suggested on behalf of the interpleader Title Service Company, since the statute allows the award of attorney's fees in the interpleader, and since we were the moving party who brought these matters before the court, that there be inserted, following the word "premises" the words "including any award of attorney's fees," which would then make it read "that this court retains jurisdiction of this matter so as to enable it to make such further and other orders in the premises including any award of attorney's fees to carry out the terms," etc.

Mr. WALKER. From what were you reading?

Mr. WALLACE. Page 5, line 4 of the proposed order.

Mr. NECASEK. The intervenor has no objection to that, your Honor.

The COURT. Which intervenor?

Mr. NECASEK. Plaintiff intervenor Home Invest-
1024 ment Company of Long Beach.

The COURT. Has anybody else any objection to that?

Mr. CHAPMAN. Not to that.

The COURT. You mean none of the lawyers have?

Mr. CHAPMAN. I am only speaking for myself, your Honor. I am sorry.

The COURT. Is there any objection as to the form on the part of the United States Attorney?

Mr. WALKER. Your Honor, I only just received a copy of it. I would like to look it over.

The COURT. Suppose you glance through it.

Mr. WALKER. I hate to answer that question without a thorough study of it.

The COURT. Do you wish some time to look it over?

Mr. WALKER. If I might, your Honor.

Mr. WESTOVER. Your Honor please, I don't have a copy. I saw it before for a few moments but I don't have a copy.

Mr. WALKER. I think we should have the opportunity of reviewing the order.

The COURT. What do you want, half an hour?

Mr. WALKER. That would be ample; yes.

The COURT. I will have a recess shortly, but before doing so, and for the matter of the record, I wish to make a statement in connection with my hearing this matter as a one-judge court.

1025 It seemed to me, as I indicated to counsel last week, that by the Conservator executing the requests for reconveyances and by the Association executing the requests for reconveyances that there was thereby eliminated any necessity for any decision as to whether either reconveyance was the proper reconveyance, which is the matter which is to be decided by a three-judge court; that is to say, that would ultimately go to the merits. But in view of the fact that both sides of the

litigation have executed the necessary requests for reconveyances it seems to me that this becomes merely more or less of an administrative matter without passing at all on the merits. Of course there would be reserved to the three-judge court any decision concerning the validity or invalidity of any action done by either party since or before the litigation involved here.

With that statement I will take a short recess and call counsel into chambers in the other case for a pre-trial conference.

(Short recess.)

The COURT. Are all counsel present? [Assent.]

I have looked the order over and the Clerk advises me that some of the parties have suggestions for changes. I think that I should indicate that I will issue the order, but that an order shall be prepared and submitted to all counsel of record to date for their approval as to
1026 form. When that is done, submit it to me and I will either sign it or make some changes in it myself.

It occurred to me, in reading the order over, that there should be a finding that the Conservator has executed requests for reconveyances for each and every one of the trust deeds, and also that the Association has.

There should also be a reservation in the order that by the order no adjudication is made or attempted to be made of any of the issues raised by the complaints in intervention or the motions of the appearing defendants, nor are they to be prejudiced by the issuance of such order. Otherwise I do not think I would have any objection to such other form or order as the parties may agree upon.

Is that agreeable to all parties? That will give you more time to examine it and make changes.

Mr. WALKER. That is most agreeable, your Honor.

Mr. WESTOVER. May we suggest also a clause including protection as to the amounts because we don't find it in the order, although it was so mentioned.

The COURT. The order should provide that. In other words, it should be made to correct any inaccuracies or errors of calculation.

Mr. WALLACE. One other point comes to mind, after checking this over. As far as the trustee is concerned,

the total computation includes the trustee's recon-
1027 veyance fees. I do not believe it was the intention of the parties that that sum be retained in the court, that is, in the registry. I believe Mr. NeCasek, unless the Court feels to the contrary or unless some counsel disagree with me, will agree that the computation should set aside the fee, which I believe amounts to $435, trustee's fees for payment either by the Clerk to the Title Service Company as trustee or provide for payment outside.

Do you have any suggestions to make along that line, or does the Court wish to express itself?

The COURT. I would like to hear from the parties.

Mr. NECASEK. We have no objection to the trustee getting his fee. It amounts to $435, your Honor.

The COURT. You mean you offer to pay them outside of court?

Mr. NECASEK. No. We offer to pay it in court, but we have no objection to paying them outside.

The COURT. Of course the trustee is the one who precipitated this. He deposited the trust deeds there originally. Unless there is some objection on the part of the parties, I cannot see any prejudice to the ultimate outcome of the litigation offhand. Can you, Mr. Walker?

Mr. WALKER. I am just considering what the position of the trustee is here, having declined to act as trustee and become a party to the action. I suppose he is
1028 still entitled to his trustee's fees.

Mr. WALLACE. My only point in that regard, Mr. Walker, is that if it is paid in court it is going to amount to a commingling of the funds of the Long Beach Federal Savings and Loan Association and/or Conservator, on the one hand, and the trustee on the other.

Mr. WALKER. However, it might be more simple, and simplify things, to let it remain in the registry until an order is made liquidating the funds.

The COURT. Then the order should provide for the segregation of that sum at this time, as long as there is no particular dispute about it.

Mr. WALLACE. We are not anxious to withdraw it.

The COURT. That is a matter to take up in redrafting the order upon the agreement of all parties.

Are there any other matters in connection with this?

Mr. NeCasek. Now, Mr. Walker, you said something about a change in the order.

Mr. Walker. I only suggested, Mr. NeCasek—and it isn't necessary that you take it up in court now—just changing the word which I thought was a little too broad. The order refers to the fact that the notes and trust deeds are in "custody" of the Court. In an attempt to be consistent and objecting to the jurisdiction of the Court, I think perhaps it should say "on deposit with the Clerk." That would conform to the facts and not be a conclusion.

1029

The Court. Any suggestion that anybody has along that line, you can try and iron them out between you.

One other matter. I called attention to the designation by the Senior Judge of Hon. Albert Lee Stephens. He will be unable to serve on account of illness. I am advised by the Senior Circuit Judge that Hon. William E. Orr will be assigned to sit in his stead next Monday.

You may have your original order back. All these affidavits of mailing, and so forth, will be placed in the file. The answers of the various parties will be filed, and the Clerk will segregate the copies.

Mr. Westover. May I file an answer also at this time?

Mr. Wallace. Prior to the court adjourning, there is one other matter that I wish to bring up after we have finished with the matter of the order.

The Court. The order will be issued subject to the conditions which I have indicated. I will sign the formal order when it is prepared and submitted to me.

The order will include the trustee's fees in the sum of $435, which will be carried by the Clerk in a separate account. In other words, it will be subject to the further order of the Court, as all moneys are.

Mr. NeCasek. There is another item of $7972.50, 1 per cent bonus, that is due the FHA, and that money is being tendered here. If the Court wants to segregate trustee's fees, I think that that one should be segregated too. That doesn't belong to anybody but the Federal Housing Authority.

1030

The Court. I think that can be taken care of in the order when it is approved as to form.

Mr. NeCasek. That money does not belong to the Association; it belongs to the Federal Housing Authority.

The Court. Why shouldn't it be paid to the Federal Housing Authority now? There is no dispute that it belongs to the Federal Housing Authority, is there?

Mr. NeCasek. I don't see any reason why it can't be paid.

The Court. All right. The order will further——

Mr. Westover. Your Honor please, we have no way of checking that amount. If your Honor is assuming we consent by our silence, I don't want to object to it, but I have no idea what it is.

The Court. Whatever this amount is is subject to verification of all counsel when you are preparing the order. When you approve the order as to form, I will take it to mean lack of objection as to the amount.

Mr. Westover. Having no records to work with, your Honor, those all being in the possession of the Conservator and we not having access to them, we would be in no position to approve such an amount. That is the
1031 point I am trying to make. I have no way of checking it.

The Court. Is there any dispute between the parties but what 1 per cent bonus belongs to the FHA?

Mr. Westover. That I would hesitate to pass on because it is one of the questions involved, as to the validity of that.

Mr. NeCasek. Let me suggest that we eliminate that and the FHA can come in and file a complaint in intervention if they want to, otherwise it will lay in the registry of the court here. I am sorry I brought it up.

The Court. There should be an order of segregation of that amount also by the Clerk. It will be 1 per cent bonus on 173 loans—why is it 173 instead of 174?

Mr. NeCasek. One of the loans is not an FHA loan, your Honor.

The Court. In the approximate sum of $7972.50, and the amount will be designated exactly in the order.

Is there anything more about this matter?

Mr. Wallace. Not within the order. I have one other matter, however.

The Court. Very well, Mr. Wallace.

Mr. Wallace. That has to do with a group of, I should

say a file or a sheaf of pleadings served upon me by mail, which I received on the 6th, the day before yesterday, consisting principally, as far as the Title Service
1032 Company is concerned, of a motion to dismiss the action as to the Title Service Company and a motion to quash the service of summons as to the defendant Fahey. The notice states that it is set for hearing contemporaneously with the other matters on the 15th.

Under the court rules it does not allow me adequate time in which to prepare counter-authorities, nor does it physically allow me time to do so. I was going to inquire whether of not we were going to be bound by that notice or whether or not an extension of time will be possible under that. I realize the situation that exists with the three judges.

The COURT. If it hasn't been served in time I will make an order now nunc pro tunc ex post facto shortening the time of service because the hearing has been set for July 15th and everybody has had ample notice.

Mr. WALLACE. We didn't know, your Honor.

Mr. WESTOVER. I received mine this morning.

The COURT. You had notice that there would be a motion to dismiss.

Mr. WALLACE. Not so far as the Title Service Company was concerned, nor any motion to quash the summons.

The COURT. Mr. Walker repeatedly stated the other day that they were going to file a motion to quash the summons and a motion to dismiss.

Mr. WALLACE. If Mr. Fahey were served, but he
1033 hadn't been served up to that time.

The COURT. I thought he said he was preparing one for the Conservator. The hearing has been set for July 15th, the statute commands that there shall be an early hearing, there have been a great many difficulties in getting three judges in the first place at all, and in the second place to get three judges when they could agree on the time.

Mr. TREMAINE. In connection with Mr. Wallace's statement, your Honor, I have been served with a notice of motion to dismiss the answering cross-claim and interpleader, which is another subject in the dismissal of the original action, and points and authorities were not attached. Mr. Walker has told me today that he will

consider the points and authorities having to do with the Title Service Company as applying to my particular client. But this also came in on Saturday and I just found out about the points and authorities today.

It does put us, in view of the volume of the points involved, in a position where we practically can't run any other practice. However, I don't like to ask for a continuance of the main hearing, knowing how hard it is to get the judges together.

The COURT. The original plaintiff came in here and desired a hearing on his injunction pendente lite, which must be set. I set that and continued it and set the time for the 15th of July, after consultation with the
1034 Circuit Judge and the other District Judge. Now the defendant has the right to appear by motion to dismiss. If I remember, on injunctions he can file that two days before.

Mr. WESTOVER. Ten.

Mr. WALKER. That was filed some time ago, your Honor.

The COURT. The motion to dismiss?

Mr. WALKER. Yes.

Mr. WALLACE. As to whom?

Mr. WALKER. As to the defendant Ammann.

The COURT. Is there a motion to dismiss now filed as to the defendant Fahey?

Mr. WALKER. There is a motion to dismiss, or in lieu thereof to quash service on behalf of Fahey.

The COURT. Fahey and Ammann?

Mr. WALKER. Ammann is just a straight motion to dismiss. I have to apologize for the delay in preparing the papers, but your Honor knows preparation does take time and they were sent to counsel as soon as they were completed.

Mr. WALLACE. The notice to dismiss as to the interpleader Title Service Company has just now been filed, your original one having been directed to the principal action. Am I correct or not?

Mr. WALKER. The last motion was filed on the 5th, Friday afternoon, and served by mail.

Mr. WALLACE. That was to dismiss the inter-
1035 pleader which was not even in contemplation, as far as I know, at the time of your conference in the judge's chambers last week.

Mr. WALKER. I believe the judge quoted me correctly. I stated that there was some contemplated motion to quash. I thought I gave you the intimation that such a motion would be filed.

Mr. WALLACE. If you did give the intimation, Mr. Walker, I missed it.

Mr. CHAPMAN. As I understand your Honor, we will have until the day after tomorrow night to file the points and authorities to matters that I only received Saturday. It seems to me, in view of the amounts involved and the constitutional questions, that that is rather short briefing time. I will do the best I can in that time to present points to the Court, but I believe it would lead to a wiser disposition of the entire matter if some way were arranged for a little additional time on those matters.

The COURT. What rule was it that you were talking about?

Mr. WESTOVER. I think it is Rule 3, your Honor. I might say that we received ours in the mail this morning.

The COURT. Rule 6 (d) for motions reads:

"A written motion, other than one which may be heard ex parte, and notice of hearing thereof shall be 1036 served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; * * *."

Mr. WALKER. Are you reading from the Federal Rules of Civil Procedure?

The COURT. I am reading from the Federal Rules of Civil Procedure.

Mr. WALKER. That is the one I stand on, because the local rules is 10 days.

The COURT. The Federal Rules of Civil Procedure prevail, and there is a provision in the local rules that if there is any discrepancy the Rules of Federal Procedure prevail.

Mr. WESTOVER. It is local Rule 3, I believe, your Honor.

Mr. WALLACE. May I respectfully direct your Honor's attention to the addition of three days in the next subsection when service is made by mail?

The COURT. The parties could obviate that by simply sending a man out this afternoon and serving them. That would be 5 days' notice.

Mr. WALLACE. Yes, your Honor, but it still doesn't obviate the time limit set by your letter, if I recall it correctly, which is as of this coming Wednesday, the 10th.

1037 The COURT. No, that does not. That is correct.

Mr. WALLACE. That is one of the dilemmas in which we find ourselves, your Honor.

The COURT. Are there any affidavits that any of the parties expect to file?

Mr. WALLACE. Frankly, I do not know of any.

Mr. WALKER. Yes, we expect to file two.

Mr. WESTOVER. We have some in mind, your Honor, but I frankly haven't had time to get them yet. It is 2:00 o'clock every night, which is all we do to research, and it is getting too fast for us.

Mr. WALKER. There is always a possibility of an affidavit requiring an answering affidavit, but at the present time we contemplate two affidavits.

The COURT. All the affidavits can be filed by the 10th, can they not?

Mr. WALLACE. Unless, your Honor, there are some required in connection with this motion to dismiss as to the defendant Title Service Company, and, frankly, not having received them until this morning—I have gone through them very, very hurriedly and with no time to digest them at all—I don't know what I have to do.

The COURT. When did you anticipate filing your affidavits, in compliance with my order?

MR. WALKER. In compliance with your order. One

1038 is being forwarded from Washington. We haven't received it yet, but I will file it as soon as I receive it.

The COURT. What you want then is time until next Monday to file your points and authorities, is that correct?

Mr. WALLACE. Yes, your Honor, and any supporting documents which may be necessary. There may be some affidavits required.

The COURT. I think the affidavits upon which you expect to move should be filed by the 10th.

Mr. WALKER. Yes. I have reference to that.

The COURT. And the answering affidavits, you may have until next Monday.

Mr. WALKER. Very well. Thank you.

The COURT. And you may have until next Monday to file your points and authorities.

Mr. WALLACE. That is all I have on my mind at present.

The COURT. Did everyone receive my letter concerning the taking of oral testimony?

Mr. WESTOVER. We received your letter, your Honor. I would like to, at least I have in mind, if I may advise your Honor, I may at the time of the hearing make an offer, and I wanted to advise your Honor that I had that in contemplation, so that your Honor wouldn't feel that we were doing it in contempt of your letter at all, but simply as a matter of preservation of what we feel might be necessary points to preserve.

1039 The COURT. In reading your original complaint again and the various complaints in intervention, I wasn't sure whether you are claiming unconstitutionality on two grounds, No. 1, the unconstitutionality of the laws and, No. 2, whether or not you were also asserting unconstitutionality of the action of the administrator, assuming the laws to be constitutional but asserting that he acted in an unconstitutional manner.

I did not understand that from your pleadings. There are various allegations in the pleadings from which a conclusion might possibly be drawn, but I cannot say from reading the pleadings that that is the assertion of anyone.

Mr. CHAPMAN. It was intended to be asserted in the cross-claim on behalf of the defendant Long Beach Federal Savings and Loan.

The COURT. Two causes of action?

Mr. CHAPMAN. Yes, your Honor, the two thoughts.

The COURT. You did not separately state them.

Mr. CHAPMAN. No, I am sorry to say that I did not. It was intended to present those two contentions.

Is this order that your Honor has made extending time for points and authorities to apply to all defendants?

The COURT. To everybody.

Mr. CHAPMAN. I would like also to state at the time on the question of oral testimony, with all respect to the rulings that you have already made, that we feel

1040 that it is not necessary to establish the fact that the law is unconstitutional but to establish that due

process has been denied us.

The Court. Due process has been denied you by the acts of the administrator?

Mr. Chapman. That is right.

The Court. In other words, an unconstitutional administration of a constitutional statute?

Mr. Chapman. Both points, that one and that the statute is unconstitutional; yes, sir.

The Court. Of course the three-judge court will have the power to vacate any order I have made concerning oral testimony. But if you are going to get to the issues in the matter here, the facts ought to be succinctly stated in affidavit form. Yes, Mr. Walker?

Mr. Walker. I was simply going to state that if the acts of the administrator are in question that that is not a proper province of the three-judge court.

The Court. That is what I was thinking. The three-judge court convenes only to determine the constitutionality of the statute, and if the Court has the power to review the unconstitutional act or unlawful of a public official, it does not take three judges. So it would seem to me that it would not be proper to permit oral testimony, because I cannot see how oral testimony
1041 could in any way affect the constitutionality of the statute. I can see how oral testimony might be adduced, and properly so, in connection with an assertion that a public official has acted without due process in the administration of a valid statute.

Mr. Chapman. Is your Honor's thought then that that would be reserved to a subsequent hearing? That if it is not proper before the three judges then it would not be passed upon by them at that time?

The Court. That is my thought, but if there is going to be three judges they might change my mind.

Any other matters? [No response.]

When will you have the order ready?

Mr. NeCasek. I will try to have it ready tomorrow, your Honor. I would like to have it ready tomorrow.

The Court. Very well.

Mr. NeCasek. If not, it will be Wednesday at the latest.

Mr. Wallace. Before you leave the bench, your Honor,

I will arrange with Mr. NeCasek so that the actual reconveyances can be deposited contemporaneously with the order.

The COURT. The requests for reconveyances have been filed with the Clerk?

Mr. CHAPMAN. I would prefer, your Honor, to deposit them with the order. If your Honor orders otherwise, I will do whatever your Honor desires.

1042 The COURT. If they are ready they should now be filed.

Mr. CHAPMAN. Let the record show that they are now filed pursuant to an order of the Court.

The COURT. I understand that those requests for reconveyances are produced and executed by the Association voluntarily at my suggestion.

Mr. CHAPMAN. Yes.

The COURT. And you are filing them voluntarily and not subject to any order or pursuant to the order of the Court.

Mr. CHAPMAN. I don't believe, your Honor, that we can properly make these requests for reconveyances until we know the money is or will be deposited with the court. I understood it would be here today, and I am now told it will be available in a day or two, and I was finally told that it would not be available until the title company approved everything that was done here. May we have permission to withdraw them if the money is not deposited?

The COURT. If you wish you may lodge them with the Clerk, to be filed by the Clerk upon the deposit of the money and the execution of the order.

Mr. CHAPMAN. That is entirely satisfactory, your Honor. That is done voluntarily.

The COURT. Very well.

Mr. CHAPMAN. Thank you.

(Whereupon, at 4:00 o'clock p. m., the hearing was adjourned.)

1043 [Reporter's certificate to foregoing transcript omitted in printing.]

1044 In the United States District Court,
Southern District of California, Central Division
WILLIAM ORR, PEIRSON HALL, DAVID LING,
Honorable Judges Presiding
No. 5421-PH—Civil

PAUL MALLONEE, C. H. NEWHOUSE, AND WINNIE BUCKLIN, ETC., PLAINTIFFS *v.* JOHN H. FAHEY, INDIVIDUALLY, JOHN H. FAHEY AS CHAIRMAN OF THE FEDERAL HOME LOAN BANK BOARD, A. V. AMMANN, ETC., ET AL., DEFENDANTS

Reporter's transcript of proceedings
Filed Oct. 15, 1946

Place: Los Angeles, California.
Date: July 15, 1946.

1046 APPEARANCES

For the Plaintiffs: Westover & Smith, 215 West Sixth Street, Los Angeles 14, California; by Wyckoff Westover, Esq., and Steadman G. Smith, Esq.

For the Defendant Title Service Company: Thomas & Wallace, 602 Jergins Trust Building, Long Beach, California; by Harry O. Wallace, Esq.

For the Defendant Long Beach Federal Savings and Loan Association: Charles K. Chapman, Esq., Ocean Center Building, Long Beach, California.

For the Defendant A. V. Ammann, individually, and as Conservator: James M. Carter, United States Attorney, Los Angeles 12, California; by Ronald Walker, Assistant United States Attorney, and Moe Silverman, Esq.

For the Defendant and Cross-Claimant R. H. Wallis: Raymond Tremaine, Esq., 210 West Seventh Street, Los Angeles 14, California.

1047 LOS ANGELES, CALIFORNIA,
July 15, 1946; 2:00 o'clock P. M.

Judge ORR. In the case of Mallonee v Fahey, are the parties ready?

Mr. WESTOVER. Ready for the plaintiff.

Mr. WALKER. Ready for the Government.

Judge ORR. It has come to the attention of the Court that some motions have been made which have just been filed to amend the complaint.

Mr. WESTOVER. That is correct, your Honor.

Judge ORR. What is the defendants' position in that matter? Do they want time in which to consider their motion, or are you ready to proceed?

Mr. WALKER. I think we can proceed at this time, your Honor. The amendments, as I have had a chance to hastily read them here, simply attempt to meet some of our objections on the failure to comply with Rule 23(b) and one or two others. There is no new factual ma[illegible] set up really.

Judge ORR. Judge Hall suggested we might get the appearances here. Will you give them please?

Mr. WESTOVER. Wyckoff Westover, and my associate, Steadman Smith, of the firm of Westover & Smith, appearing for the plaintiffs.

Mr. CHAPMAN. Charles K. Chapman, appearing for the defendant Long Beach Federal Savings and Loan Association.

1048 Mr. WALLACE. H. O. Wallace, spelled W-a-l-l-a-c-e, of Thomas & Wallace, appearing for the defendant and cross-complainant Title Service Company.

Mr. TREMAINE. Raymond Tremaine, appearing as attorney for the defendant, cross-complainant and interpleader Robert H. Wallis, W-a-l-l-i-s.

This is Mr. Wallis here.

Mr. WALKER. Ronald Walker, Assistant United States Attorney, appearing for the defendant Ammann generally and for the defendant Fahey specially on two motions.

I would like further at this time to move to associate Mr. Moe Silverman, a member of the Nebraska bar, in the matter.

Judge HALL. Specially? Is he admitted specially?

Mr. WALKER. Yes, for the purpose of this case, your Honor.

Judge ORR. If there is no objection, that order will be entered.

1049 Judge ORR. Gentlemen, the court at this time is interested in the question of whether or not this

case comes within the provisions of Section 380a, Title 28, and what statute you are attacking, in order to bring it within that section, and the reasons why the particular statute is unconstitutional.

Mr. CHAPMAN. May I be heard at this time, your Honors, before going into that?

Judge ORR. Yes.

Mr. CHAPMAN. This will be very brief. It is the item under 174 of the trust deed for $800,000. I have been requested by Mr. NeCasek, for the intervenor Home Investment Company, to have a resolution approving request for reconveyance lodged with the clerk.

Judge HALL. You are addressing that now to me as a one-judge court?

Mr. CHAPMAN. That's right.

Judge HALL. Couldn't that be deferred?

Mr. CHAPMAN. If your Honor wishes. I will be very brief.

Judge HALL. Is it some matter which should not be deferred?

Mr. CHAPMAN. I feel it should go on as quickly as possible, as I understand there is a limitation of time on the matter. We are going to call this meeting as
1050 soon as I make the point in the record. The request also comes from the Title Company. One of the regulations adopted by the government is under Title XXIV of Federal Regulations, Part VI, Section 207.3, which reads in part as follows:

"Immediately upon taking possession, pursuant to Section 207.1 of these rules and regulations, of such Federal Association, the Conservator shall succeed to all the rights and privileges of the Federal Association, its officers and directors, or any of them. Such officers and directors, or any of them, shall not thereafter have, exercise, or act in connection with any such rights, powers or privileges, or any assets or property of any nature of the Association."

Notwithstanding that regulation, we feel it is unconstitutional, and we are going to have a meeting of the board of directors tomorrow night. We want the record to show notice on the government to that effect. We are going to attempt to ratify at that meeting the action in depositing requests for reconveyance with the clerk in

order to free the Home Investment Company's title to its property.

Judge ORR. Mr. Westover?

Mr. WESTOVER. If your Honors please, I take it that your Honors are substantially familiar, of course, with the provisions of Section 380a, of Title 28 of the Judicial Code, but in order to refresh your memories if I
1051 may be permitted to read it:

"No interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge."

1052 The action here filed attacks the constitutionality of the Federal Home Owners Loan Act of 1933, Subdivision D of Section 1464, found in Title 12 of the Federal Code. The action arises, as your Honors may know, from the complaint, out of the action of the Federal Home Loan Bank commissioner of the appointment of the Conservator for the seizure of the Long Beach Federal Savings and Loan Association——

Judge ORR. Just pardon us a moment. Mr. Clerk, was any order made for the filing of the amendment to the complaint?

The CLERK. No.

Judge ORR. As I understand it, there is no objection to the filing of that amendment to the complaint?

Mr. WALKER. That is correct.

Judge ORR. Then the order may be entered that the complaint may be amended in the particulars asked for.

Mr. WESTOVER. Briefly, the factual background is, as I said: That the action arises out of the appointment of the Conservator for and the seizure of by the Conservator of the Long Beach Federal Savings and Loan Association at Long Beach, an institution which was organized about

1934 with a capital structure at that time of around $7500, and at the time of the seizure, on May 20, 1946, had assets of approximately $26,000,000 in trust. All of the assets of that association were local, and involved both personal and real property, a substantial amount of that, approximately $12,000,000 being in
1053 trust deeds on Southern California real estate.

The seizure and appointment of a Conservator was made without any prior notice, hearing or opportunity to be heard on any request filed, because of any mistakes, errors, or improper situation whatsoever.

The complaint further sets up and alleges and charges that the seizure was done through bias and prejudice upon the acts of the Commissioner rather than upon any factually sound basis. The order for seizure, at the time it was seized, did not set forth any facts whatsoever. There was a list of some ten or twelve stockholders and its president, of that association, Mr. Gregory, after a considerable insistance upon his part, which was an unsigned statement, and only after insistance did the defendant Ammann himself certify to his own position as such as Conservator.

1054 Demands were made at the time of the seizure for receipts to be given for the assets, cash and other negotiable instruments and registered bonds then in the premises amounting to something approximating $100,000, which receipts were declined and were not given.

The complaint further sets forth of course that the plaintiffs are informed and believe, and upon such information and belief, allege that the reason for the seizure arose out of a political dispute between Mr. Gregory and the commissioner, Mr. Fahey, arising over the question as to who should be president of the Los Angeles Federal Savings and Loan Bank, a 43 million dollar institution, the presidency of which had been in dispute for some time between a Mr. Berry, who had had many years of experience in the institution, and Mr. Twohy, of Washington, whom Mr. Fahey apparently desired to have become president of that institution.

That had resulted, your Honors please, in the seizure of the Los Angeles Federal Savings and Loan Bank, as these plaintiffs were informed, the appointment of a Con-

servator, and since informed that that was in error, they didn't even appoint a Conservator, they simply liquidated and moved the assets of that Los Angeles bank to a merger, all within 48 hours or less, with the Portland bank and that, in turn, being moved to San Francisco and under the title of the San Francisco bank. The commingling of the assets of the Los Angeles bank
1055 amounting to approximately 48 million dollars with the assets of the Portland bank amounting to approximately 9 million dollars was all accomplished, as I understand it, within a very few days.

Arising out of that dispute, efforts were being made by various of the local associations, including the Long Beach Federal Savings and Loan Association, and being more or less led by its president, Mr. Gregory, to bring appropriate action to recover back for the Long Beach Association and for other associations in a joint suit, but for the Long Beach Association approximately $400,000 belonging to that association, approximately $360,000 of which had been in the form of stock in the Los Angeles bank and approximately $40,000 some-odd dollars which are in the form of undivided surplus and profits of that bank, which were taken and commingled with the Portland bank and the San Francisco bank.

That in order to stop the filing of that suit the Long Beach Federal Savings and Loan Association was seized and its officers were deprived of any authority whatsoever that they might have, at least according to the rules and regulations promulgated by the commissioner, Mr. Fahey, thereby stopping and preventing them from bringing appropriate action.

This particular suit here, your Honors please, of course is brought by a shareholders members committee, composed of three people who have now brought the
1056 suit for and on behalf of all of the shareholder members of the Long Beach Federal Savings and Loan Association, of which we are informed there were approximately, I believe, something like 16,000 at the time of the seizure. I might say that that number has probably been substantially decreased because it is our information that since the seizure withdrawals to the extent of approximately 8 million dollars have been made from the institution.

Now this particular action, of course, sought an immediate injunction against the administrator, Mr. Fahey, Mr. Ammann, and any of their subordinates, from commingling or merging the Long Beach Federal Savings and Loan Association with any other institution. As we felt the enjoining was subsequently necessary otherwise any litigation might be profitless because the acts might be accomplished before we could proceed to trial, a temporary restraining order was issued to restrain the merger.

I believe it expires at 5:00 o'clock this evening. At this time, if we are not completed with the argument, I will ask, if I may, that our motion be considered for a continuance of that restraining order pending the outcome of the termination of this matter here.

Judge HALL. Will that be made to an indefinite date?

Mr. WESTOVER. I believe, unless there is objection, your Honor, it could be.

Mr. WALKER. If it is made, could it be made simply until the ruling of the Court is handed down?

Judge HALL. Until the ruling of this Court, the three-judge court?

Mr. WALKER. If the three-judge court determines it is going to hear the balance.

Judge ORR. The order will be made then, if there is no objection, that the restraining order be in force and effect until the termination of the hearing by this Court of the question of whether it will proceed with the hearing, and if it does, until the decision upon the matter is submitted, and that will be made without prejudice to the making of an order continuing the restraining order in the event the matter is heard before one judge.

Mr. WALKER. Yes, your Honor.

Judge ORR. Is that understood?

Mr. WESTOVER. Thank you, your Honors.

Might I also, while we are on the subject, ask that a similar order be made as to the restraining of the administrative hearing which was to have been held July 3rd, and for which there is now a temporary restraining order outstanding, which expires I believe today also, and particularly as I understand that that hearing was continued to August 20, I believe.

Mr. WALKER. That date is correct. I don't know that it is really necessary that a further restraining
1058 order be held in view of the length of time until that administrative hearing will be heard, if it is permitted to be heard. There will be no advancement of the date from August 20th.

Mr. WESTOVER. Then I take it there is no objection.

Judge ORR. Inasmuch as the three judges might not be available in the event that the matter should go over to that time, we think perhaps we had better make an order at this time similar to the other order made.

Mr. WALKER. I have no objection.

Judge ORR. A similar order will be made relative to the administrative hearing.

Mr. WESTOVER. I think I probably should correct one statement I made to include Sections (a) and (d) of Section 1464, I believe it is.

Mr. WALKER. Might I offer a suggestion there, Mr. Westover? I believe it is (a), (b), (c) and (d) of Section 5 that you are referring to.

Judge HALL. Section 5 of the Home Loan Act.

Mr. WALKER. Yes.

Judge HALL. That is Section 1464 of Title 12 of the United States Code.

Mr. WESTOVER. I believe they are the same thing.

Judge HALL. Yes, Section (a) is the same.

Mr. WESTOVER. We are of course attacking primarily the authority to be delegated under Section (d),
1059 but it has been pointed out that possibly Section (a) has some bearing thereon also.

Of course the complaint, if your Honors please, also asks for the removal of the defendant A. V. Ammann as Conservator and for the return to the Long Beach Federal Savings and Loan Association and its duly constituted officers, whoever they may be, of its assets, and of course for an accounting upon the return as to the assets and the restraining orders which I have already mentioned against the merger.

Our primary reason, I might say, if your Honors please, for considering these acts of Congress, the sections of this act of Congress, as unconstitutional is essentially that it is an improper attempt by Congress to delegate

a legislative function to an administrative body without setting up any criteria or guides or without setting up any signs limiting them or establishing policy, leaving them an unfettered discretion, if you wish to call it that, to make whatever rules or regulations they may see fit.

The act itself, if I may point out——

Judge HALL. Mr. Westover, do we understand that your position is that the three-judge court shall hear only your assault upon Sections (a) and (d) of Section 5 of the Home Loan Act?

Mr. WESTOVER. If your Honor please, I would rather not limit our position quite so closely. I feel that
1060 that is the primary function of course of the statutory three-judge court here. The cases so indicate. On the other hand, where the acts throughout are so intermingled, have so much bearing upon the general situation as they do in these circumstances, I feel that your Honors, if you see fit, would have judicial authority and jurisdiction to hear the entire matter.

If your Honors do not see fit to hear the entire matter but limit your decision solely to the constitutional question as to the act of Congress, then of course there still remains the remaining questions which, under some of the cases, would be referred to a District Court, a one-judge court, for final determination in the event the act was held to be constitutional. Of course in the event the act was held to be unconstitutional, those particular parts of it, there would be no need for a further hearing on those other portions.

We feel of course that the only attempt that could be made to justify such a seizure would be under the rules and regulations promulgated by the commissioner under the alleged or purported authority of this attempted delegation of authority to him, that those rules and regulations themselves and in their own rights may be unconstitutional, and we so challenge them.

Judge HALL. Is it your position that that must be heard by a three-judge court, as to the constitutionality of the rules and regulations?

1061 Mr. WESTOVER. Not must be, but may be, your Honor.

Judge HALL. It is your position that the statute requires a three-judge court?

Mr. WESTOVER. The statute requires a three-judge court as to the constitutionality of an act of Congress only.

Judge HALL. It is not your position that it requires a three-judge court as to the rules and regulations?

Mr. WESTOVER. That is correct, your Honor.

Judge HALL. You have also assailed the acts of the commissioner and the acts of Aumann as themselves being unconstitutional even though the rules and regulations and the act may be now?

Mr. WESTOVER. Yes.

Judge HALL. Is it your position that that must be heard before a three-judge court?

Mr. WESTOVER. Not must be, but might be and may be, if your Honors see fit to take jurisdiction over it.

I may say, if we come to the question of the acts of the Conservator himself and the commissioner himself, we feel of course that those may be of two characters, one, with abusive authority, let's call it, or discretion within the rules and regulations and acts, and of course also there can be ultra vires acts by such parties in excess or outside of the authority of their own rules and regulations.

Judge ORR. We would like you to confine yourself
1062 to the constitutionality of the act, Mr. Westover.

That is of primary concern to this three-judge court. The other things we will take up later. If we determine that the act is unconstitutional, as you say, that will dispose of the other matters, and if we determine that it is constitutional then the other questions will come in their order before either the three-judge court or one of the judges, as we may determine.

Mr. WESTOVER. Very well, your Honor.

Judge ORR. The thing we are concerned with now, is whether or not that act of Congress is unconstitutional.

Mr. WESTOVER. Very well, your Honor.

We of course feel that the act itself, that is, the act of Congress—and when I speak of the act, if I may, in view of your Honors' ruling, it will be deemed, I take it, that it is the act of Congress, not any of the rules and regulations—the act itself sets up no process of any kind, affords no opportunity to be heard, sets up no rules or regulations for notice, sets up nothing in the way of appeals or review of any of the acts of the commissioner, and we therefore feel that the act does not provide for

due process at all, or any process, and hence is in violation of the Fifth Amendment to the Constitution, to the effect that no person shall be deprived of property without due process of law.

We also feel that since the act provides for no hearing ahead of any appointment of Conservator, or ahead
1063 of any seizure by a Conservator, that the act is in violation of the Fourth Amendment as it contravenes the Constitution in that the right of the people to be secure in their papers and effects against unreasonable seizure shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation and particularly describing the thing to be seized.

There having been no oath or affirmation, at least none that has been shown to us or to this Court, prior to such appointment nor seizure, there having been no effort even to have any prior notice or opportunity to be heard or to correct any errors that there might have been or to be confronted with any witnesses or to be advised of the charges against them, that there has been not even an attempt to comply with due process and the act itself does not set up any rules and regulations nor criteria for so requiring.

I would say, your Honors, that copious points and authorities have been filed at great length covering, I believe, all of our points and all of our positions, so I certainly will not attempt in oral argument to do more than just pick up a few of the highlights of those points and authorities that have been filed as to the law. Of course I think we are all familiar with the so-called chicken case, or the A. L. A. Schecter Poultry Corporation v. United States, which is found in 295 U. S. 495, which held the NRA
1064 unconstitutional on the ground that it was an improper atempt by Congress to delegate to the President of the United States an unlimited or unfettered authority to make rules and regulations.

The Court there, in effect, said that Congress cannot delegate legislative power even to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of industry.

Of course there are other cases on that point that we have cited at great length in our points and authorities.

One of them is the Panama Refining Company v Ryan, 293 U. S. 388, holding the National Industrial Recovery Act unconstitutional along a similar line of reasoning.

Then there are the three cases of Morgan v United States, the latest of which I believe is 304 U. S. 1, which follows the same line of reasoning.

Judge HALL. What act was involved there?

Mr. WESTOVER. Offhand, your Honor, I will have to dig it out. It is in one of our briefs and I have forgotten it. There are so many of them.

In the Panama Refining Company v Ryan case, the Court held that Congress manifestly is not permitted to abdicate or transfer to others the essential legislative functions with which it is thus vested.

Judge HALL. What was the language of the act?

1065 Mr. WESTOVER. That was the NRA.

Judge HALL. What did it say in it?

Mr. WESTOVER. I don't have that in front of me, your Honor, but it is set up in our points and authorities.

Even in those numerous cases, your Honor, I might say where the Courts have affirmed the delegation of authority to make rules and regulations, in each instance it is very significant that the Courts have pointed out that the acts in those particular cases, where they have been affirmed, have set up policies, rules or regulations or yardsticks or some criteria or formula to guide the administrative body, the President or whatever officer it is, in the exercise of the rule-making authority attempted to be delegated.

In the Wichita Railway and Light case v Public Utilities Commission, the Court indicated that it was a wholesome and necessary principle that an agency should have some procedural rule set up in the act to guide them in the exercise of the legislative functions attempted to be delegated.

I might say, your Honors, that there is rather an exhaustive brief in our plaintiffs' memorandum of points and authorities, point 1 of which raises the delegation of legislative authority, which is attached to the memorandum for the injunction to restrain the merger which was filed earlier in the proceedings.

1066 Judge HALL. That is the memo attached to your motion for a preliminary injunction?

Mr. WESTOVER. That is right, your Honor.

Judge ORR. Mr. Westover, I think we have your idea clearly in this: You are relying upon the invalidity of the statute, not the alleged illegal acts of the commissioner? Is that your idea?

Mr. WESTOVER. That is correct. That is the requirement of Section 308a, as I take it.

Judge ORR. That would follow. The first thing we have to find out, is that act constitutional?

Mr. WESTOVER. That is correct.

Judge ORR. If that is a constitutional act, then the question of what the commissioner has done in the matter would follow.

Mr. WESTOVER. That is correct; whether the rules are proper or improper.

Judge ORR. You are asking us to determine at this time whether or not the Congress exceeded its authority in setting up the provisions for the appointment of a Conservator, or a receiver, without also setting up the machinery by which he acts, by which the appointment could be made. That is, supposing we would say that a necessary element of the legal appointment of a receiver would be notice and hearing, and things of that character, do you claim
1067 that those must appear in the act itself, rather than to be found in the proceedings of the administrator?

Mr. WESTOVER. Not those particular points alone, your Honor. There must be some formula on it, a rule or a guide stick—a yardstick, as some of the cases express it, to limit the rule-making authority attempting to be delegated.

Judge ORR. Give me an example, please.

Mr. WESTOVER. For example, in this particular instance—may I preface my answer to your Honor's question: It is conceded, I believe, that this association was entirely solvent. Statements have been made by both sides, and the allegations are such in the complaint, and there has been no denial of them,—in fact, the complaint shows an allegation of undivided surplus and profit of approximately $1,300,000, which have not been controverted, so we do not have here the situation of an insolvent institution for which a Conservator was being appointed. I probably overlooked that in my statement of facts.

Under those circumstances, your Honor, the question arises: Just what rule is to guide the commissioner in

determining which association shall be merged with what other associations? Is it a question of solvency or insolvency, good management or bad management, or should well-managed associations be commingled with poorly-managed associations? Or is it a question of locality?

1068 Or is it a question of the need of communities?

Judge ORR. Do you mind these interruptions? I don't want to interrupt you, if it bothers you at all.

Mr. WESTOVER. Not at all.

Judge ORR. In order to get these things clear, I would rather ask questions now than wish I had after we come to consider the case. Would that be a question of discretion? A certain discretion must be placed in the commissioner, I suppose you will admit?

Mr. WESTOVER. Yes.

Judge ORR. That the Congress cannot attempt to set up every little detail as to whether a Conservator will be appointed or whether he will not be appointed?

Mr. WESTOVER. That is right.

Judge ORR. There must be certain discretion vested in the administrator's office as a matter of necessity.

Mr. WESTOVER. That is right.

Judge ORR. Just how far must the Congress go in setting up the criteria you speak of, under which the commissioner must function? Do you claim that the Congress must have said that the commissioner shall appoint the receiver or Conservator only in case of insolvency? Should they have gone that far, and then leave in the commissioner the determination of whether the particular institution is insolvent or not?

Mr. WESTOVER. Yes, I concede that had the act

1069 itself provided that if the commissioner accords appropriate proceedings or hearings, and finds the institution to be insolvent, he shall appoint a Conservator—I am using that as an example.

Judge ORR. But you claim the act must have gone that far in order to meet the requirements of the constitution?

Mr. WESTOVER. Or at least have set up some policy, expressed congressional policy, or some expressed limitation on the unlimited or unfettered discretion of the commissioner, within which he would have authority to make rules and regulations.

Judge HALL. Isn't the norm or standard set forth in Subdivision d as to when to appoint a Conservator or receiver to take charge of the affairs of any such association, or to require an equitable readjustment of the capital structure of the same, in that it is a definition of the standard which the administrator must use when he appoints a conservator or a receiver?

Mr. WESTOVER. It would hardly seem to me that that would be sufficient, your Honor.

Judge HALL. Is it, whether it is sufficient or not—is it a standard?

Mr. WESTOVER. No, I believe, your Honor, it is an additional thing for the Conservator to do.

Judge HALL. Give us an illustration of what you
1070 consider to be a valid delegation of power.

Mr. WESTOVER. I believe a delegation of power by Congress to the present connection was probably very properly set up in the delegation of authority.

Judge HALL. What about the Comptroller of the Currency and his power to appoint a receiver?

Mr. WESTOVER. Under the National Banking Act?

Judge HALL. Yes.

Mr. WESTOVER. As I recall it, that act sets up quite a procedural set-up in that it tells when to do it, and it sets up the appellate provisions in that same act, your Honor.

Judge HALL. But the original appointment, that is, after he is appointed, the original appointment of the Conservator as distinguished from the receiver governed by Section 203 of Title 12—do you have it there? Have you got O'Connor——

Mr. WESTOVER. No, the Federal Code, your Honor. What is that section?

Judge HALL. 203, Title 12. Do you find it, counsel?

Mr. WESTOVER. Yes, your Honor. I think that is also the practise under Section 199:

"Such request, as approved by the Comptroller of the Currency, shall be, together with the certificate of facts in the case, and his recommendation as to the amount of money which, in his judgment, shall be so used and employed——"

1071 Judge HALL. That's for a receiver.

Mr. WESTOVER. Yes.

Judge HALL. Both the Home Loan Act and National Banking Act provide for two types of trust officers, a receiver, and a Conservator. Before the receiver can be appointed under Section 191 of the National Banking Act, there must be notice or findings, and the like, but under Section 203, governing the appointment of a conservator that grants the power. Where is there in there a definition of a standard? I don't know that the act has been held constitutional under assault.

Mr. WESTOVER. I don't see a standard set up in there for a Conservator other than, "Whenever he shall deem it necessary in order to conserve the assets of any bank——"

Judge HALL. "for the benefit of the depositors and other creditors thereof,"

Mr. WESTOVER. I presume that would take a prior finding of fact that that was necessary, under appropriate proceedings. Of course, this particular National Banking Act is not the one under consideration here. I will grant, your Honor, that I am not too familiar with it, but I do not feel that in that act, as I understand it, it sets up appellate provisions.

Judge HALL. You need not take the time now. I thought you might be able to answer the question offhand.

Mr WESTOVER. I am sorry I can't.

Judge HALL. Excuse me for interrupting your 1072 answer to Judge Orr.

Mr. WESTOVER. I think I completed my answer to Judge Orr. He asked for an example, which I gave him. I will be happy to give him further ones.

Judge HALL. Just a minute. You maintain that if this section had, under 1464 (d), the power to appoint a Conservator to preserve the assets of an association for the benefit of the depositors and other creditors, that it would then have been valid?

Mr. WESTOVER. No, your Honor. I personally think that in itself alone would not be a sufficient standard unless it were prefaced by some criteria that it was in danger of insolvency, or is insolvent, or there is a finding of insolvency, or some similar finding of fact that would guide him as to how he was to exercise the discretion in making such rules and regulations. In other words,

under the current act of the Federal Home Loan Bank Act of 1933, to be meticulous, if I may be pardoned, maybe the Conservator would like to merge all associations that have people of the same political faith, or different political faiths, or that their membership should be of a certain character; or their locality should be adjacent. What is to guide him in setting up rules and regulations for the merging, consolidating, and liquidating, or otherwise making rules pursuant to Subdivision (d) of the act?

Judge ORR. Doesn't the act itself carry with it
1073 the admonition that the commissioner shall not act capriciously; that he must act within the law and the rules and regulations must be such as will be according to law and constitutional; so an attack can be against a regulation of a commissioner that might be unlawful? If he acts without due process, then any act of his, because of the lack of sufficient regulation, or legal regulation, would make his act null and void rather than by attack on the statute itself?

Mr. WESTOVER. The statute itself sets up no admonition that I know of.

Judge ORR. Not in express words, but there would be that by implication?

Mr. WESTOVER. Only as we might appeal to a court, such as this, for the purpose of equitable jurisdiction to restrain any unlawful acts exercised by the commissioner, that were unreasonable.

Judge ORR. You could appeal to the court to restrain, under those circumstances, if they were unreasonable, because of the lack or unreasonableness of regulations rather than the defect in the statute itself.

Mr. WESTOVER. Excepting if your Honor please, that similar to other acts that have been found to be unconstitutional on this same ground, lack of criteria. This act follows the same pattern in that it sets up no criteria, except in the implied reasonableness of the adminis-
1074 trative action making such rules and regulations.

For instance, if this particular act, under the rules and regulations originally set up back in 1934, then in existence, among other things, had a statement of policy in the rules and regulations, Section 42, to the effect that

the then board of five board members would not exercise any of their extraordinary powers given them under the act and under their own regulations unless they first accorded a prior hearing and opportunity to the association that they had in mind, to be heard. Also, those same rules and regulations, back in 1934, provided for a ten-days' notice of hearing immediately after seizure, to all of the shareholder members of such association,—an opportunity for such shareholder members to know when and where such hearing would be held, and be heard.

Judge ORR. What is your idea about these regulations? Are these legal? Would acts under these be legal?

Mr. WESTOVER. Not under this particular act, your Honor, because the final act itself does not set up definite rules and regulations, or guide posts, to govern the commissioner in making such rules and regulations. Here we have a course of conduct that exemplifies the need of such criteria. We found the 1934 regulations were not particularly unreasonable. We find, on the other hand, on February 24, 1942, the Board was done away with by executive order, and it became a commissioner of one man, Mr. John Fahey, and that then he revised
1075 these rules and regulations to delete therefrom any statement to the effect that the commissioner would not act without prior hearing, except under improper circumstances. He deleted that section from the rules and regulations. He deleted the section about any notice to shareholder members, from the rules and regulations theretofore in existence. There is no guide post set up in the act,—criteria by which his discretion is limited, at all. In other words, he might have said: We will only allow gray-haired gentlemen to appear,—to be ridiculous again.

Judge ORR. I understand that is your example to show the necessity of the limitation being within the statute itself.

Mr. WESTOVER. That is our contention, your Honor. Primarily, we feel that several of the cases that have been cited to you set that forth very definitely and positively.

Judge HALL. By the way, have you abandoned your motion to take all testimony, or have you expected to let a one-man court rule on that?

Mr. WESTOVER. If your Honor please, on that I would like the record to show that we have intended to offer oral testimony to the three-judge court. But since your Honor ruled by letter to this effect we do not feel justified in subpoenaing into court witnesses. I am inclined to think, of course, if your Honors feel that you are going to limit your consideration only to the pure con-
1076 stitutionality of the act itself, as you have already somewhat indicated——

Judge HALL. You have offered no law to support your contention that we should do otherwise.

Mr. WESTOVER. I think my contention was, your Honor, that I thought it was discretionary with your Honor.

Judge HALL. Where do you find that authority, that we can use discretion in extending our jurisdiction?

Mr. WESTOVER. Simply in the statute itself, in that it says that you cannot hold an act of Congress unconstitutional, or restrain it, on the ground of its unconstitutionality except by a statutory court composed of three judges. But, on the other hand, I take it that section does not prohibit your Honors from taking testimony on other matters that are incident to the same constitutional attack on the act.

Judge ORR. In order that there be no confusion, so counsel will know exactly what they have to follow, we rule now we will not consider any question presented other than on the constitutionality of the statute under question.

Judge HALL. As a three-judge court.

Judge ORR. As a three-judge court.

Mr. WESTOVER. I take it that implies that other questions will be reserved for future consideration, if necessary.

Judge ORR. I mean by that, if we hold this statute constitutional, then all of the other matters will be addressed to one judge for determination. We rule
1077 on the constitutionality of the statute in question as a three-judge court. Other matters, if they follow, will be before one judge.

Mr. WESTOVER. Very well.

Judge ORR. Do either of you gentlemen desire to address the court?

Mr. CHAPMAN. I also, your Honor, on behalf of the defendant association, attack the constitutionality of the act in my cross-complaint. Whenever the court desires, I would like to be heard on that.

Judge ORR. Right now, if you care to.

Mr. CHAPMAN. The question of the validity of the act, in my opinion, must be decided by the act itself, not by what someone with delegated authority does, or does not do. If the act is constitutional, if the Congress has given law-making power to the commissioner, if that can be done, then what the commissioner does will not affect the validity or invalidity of the act. Either the act was proper, and gave him legislative authority to make his own rules, make his own court, set up his own hearing board, denying us access to a court of review—either that was all valid and constitutional, from the act itself, or if the act is unconstitutional, he did not have that power. I do not feel, as your Honors somewhat indicated, that the validity of this act of Congress will depend on what the commissioner does under it.

Judge ORR. I think that is correct.

1078 Mr. CHAPMAN. Either the act was constitutional, and Congress can let one man make his own rules for himself, and make his own court for himself, and deny us recourse to these courts, or they can't. If they can't do it, the act is unconstitutional. The act itself is about as vague as anything could be. Incidentally, I would like, before I go on, to state that even Congress did not try to give one man the power to be exercised; they gave it to a five-man board, if they gave it to anyone. There was an executive order attempted under the emergency of the war, after Pearl Harbor, in 1942,—executive order 5070, attempting to remove the five from the board, and put it in a one-man dictator, who was to exercise the powers of Congress. If they intended to give it to anyone, they gave it to five men. I only mention that in passing. I don't believe the act possibly could make the former act of Congress constitutional or unconstitutional.

Judge HALL. That executive order was promulgated by virtue of the first War Powers Act.

Mr. CHAPMAN. That is correct. I might say I am glad to have any questions. I am glad to have an interplay of thoughts as we go along.

The act itself—I want to read the authority it attempts to give, if your Honors will bear with me a second until I find the language. The section is Section 5 (d).

Judge Orr. That is 5 (d) of 1464?

1079 Mr. Chapman. That is right. I would like your Honors to follow me as I read this:

"The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver"

Your Honors will observe there is no distinction. Conservator and receiver are treated alike in this grant of power.

"to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

1080 All right. Where in this act is any limitation put upon the power to merge? There isn't a word here. The Board shall have full power to attempt to regulate. In other words, the Board is given the power of Congress to make such laws as it may please to make. That is what they have attempted to do here.

An example of that is what they did when they merged our predecessor, the thing that started this chain of mergers and seizures, the Federal Home Loan Bank of Los Angeles. The Government has put in a copy of that order of seizure and merger. It is one of the last affidavits they filed. It was attached to the affidavit of Mr. Dougherty as an exhibit. It reads:

"Federal Home Loan Bank Administration.

"Order No. 5082.

"Date, March 29, 1946.

"It is hereby ordered that effective March 29, 1946 the Federal Home Loan Bank of Los Angeles shall be liquidated and reorganized * * *"

That is the first notice that anybody had that anything was to be done there. There were 41 million dollars in

assets in that institution. They dated an order March 29th and they liquidated it on March 29th, and they reorganized it into an entirely different organization. And they tell us, the Long Beach Federal, that had $400,000 worth of stock in that place, that we were now
1081 stockholders in the new organization. There was no notice, there was no hearing, there was no due process, there was nothing.

Judge HALL. Was there any finding that it was insolvent or in the best public interest?

Mr. CHAPMAN. Here is what it says:

"Whereas, it has been and is hereby determined that the efficient and economical accomplishment of the purposes of the Federal Home Loan Bank Act, as amended, will be aided by the action contemplated herein; now, therefore * * *" * *

Judge HALL. Who filed it?

Mr. CHAPMAN. I wouldn't like to say. I think the Government should answer that. They certify it by the secretary of the Board what the one-man dictator has done.

Judge HALL. According to that certification, who did, one man for the Board?

Mr. CHAPMAN. That is right. But we find when we get to our congressional hearings that various individuals and deputies seem to try to take responsibility for various acts. I never heard who took the blame or credit, whatever it may be, for this particular act. I have an affidavit that was received four or five days ago where at least we found out who was supposed to have ordered the seizure of the Long Beach Federal, a gentleman named Lee makes his affidavit that it was his order. I understand
1082 that he is one of the deputy governors, I believe, acting under Fahey.

But coming now to the power that is given. If this delegation of power that I have just read to you is any good, if Congress could give this power, there would be a legislative body to make your laws, there would be a judge to determine your facts and to be the sheriff and execute them, then this is a perfectly valid act. And if Congress couldn't give that much power, than the seizure of the Los Angeles bank and the seizure of our Long Beach Federal

was unconstitutional, and that is why we have asked the three judges to convene under Section 380 to determine that fact for us; that is, the two points, the merger, the liquidation, and the appointment of the Conservator.

Now we acted to restrain a merger. There is only one reason that we had any time to act and weren't merged just as fast as the Los Angeles bank was, and that was the minute the Long Beach public heard about it a run started and millions of dollars a day poured out of that institution. You didn't dare merge it with anybody in that condition. And before the run had stopped there was a restraining order out issued by you, Judge Hall, withholding a merger until such time as we could appeal to the courts.

Now on every appeal to the courts under their regulations—this association has no business here—if their regulation is valid our board of directors' power was
1083 suspended. That is why I had to make the appeal that I made a few minutes ago, or the notice rather, that we were going to have a meeting of our board of directors. Their regulation says that after the Conservator is appointed the only things we can do as an association are to adopt or present such proper petitions to these gentlemen who seized us that they may care to listen to.

I am showing that merely to show what they have tried to do under the authority that was given. I don't think they ever got that authority. We are going to go ahead and have our meetings of our board of directors and we are going to ratify the deposit of the trust deeds in court and try to free the titles that they have tangled up.

But coming back to the three-judge court situation and the validity of this act, nowhere in this act is a word said about a hearing by anybody. Nowhere in this act is a word said about why they should merge or when or why they should consolidate or when and what authority they need to liquidate. Apparently they didn't need any authority at all to liquidate the Los Angeles bank. They did it all on the 29th of March, according to their own order.

I don't think that that kind of power can be given by Congress under our United States Constitution to any-

body, five men, one man or anybody else. I think that due process requires a factual determination. If
1084 you want to create an administrative board, as they did in the National Labor Relations Act, and say that this board shall have exclusive power to find certain facts, and when those facts are so found the Federal Circuit Court of Appeals shall have the power to review and after such review there is a final order, that is a valid delegation by the Congress to an administrative body.

But what was done here I can hardly believe it when I read it. "The Board shall have full power to provide in the rules and regulations for the consolidation, merger or liquidation, including the power to appoint a Conservator or receiver."

Now when they started out under their regulations they had to have a hearing. They had a five-man board. They have never provided for any judicial review in the regulations from start to finish. If their regulations are valid, if Congress can foreclose us from the courts, they seize the place, they have their hearing, they decide whether they did right or not, and that disposes of the issue. That is not my understanding of due process of law under our Federal Constitution, either for the merger or for the seizure.

They have gone even further than that. Just before the seizure of the Federal Home Loan Bank in Los Angeles they made an order—it is referred to in my cross-claim, the number is given; I don't happen to have it
1085 before me at the moment—but the effect of that order was that the Federal Home Loan Bank administration and its files and its officers were exempt from subpoena by any court, including the Federal Courts, and including subpoena dudes tecum. That order was made less than a week before the seizure in Los Angeles.

Going a little bit into the factual situation, I know it is away from the constitutional question, but one of the ways to test this act is what was done under it or what they tried to do. I come to the point where I said the reason we weren't merged is because we had the run. Then we had the restraining order.

Now if you follow this act, aside from the regulations

for just a moment, there is nothing to prevent them doing what they did to the Los Angeles bank. They just issue an order and yesterday your money was deposited with the Long Beach Federal Savings and Loan, you were a shareholder there, tomorrow it may be in San Francisco, the day after it may be in Washington. They have got that power if this act is constitutional.

If says the Board shall have full power to do these things. Now can Congress give five men or one man or anybody the power to make the law? We say that it cannot. There are a number of Supreme Court decisions that also say that they can't. Certainly they cannot withhold from anyone the right to appeal to the courts.

1086 If they do, there has been a denial of due process.

They attempted to do that to us. I am reading just briefly from one of the cases already in my points and authorities, Ohio Valley Water Company v. Ben Avon, a United States Supreme Court case, which states:

"Withholding from the courts power to determine the questions of confiscation according to their own independent judgment when the act of a state public service commission in fixing the value of a water company's property for rate asking purposes comes to be considered on appeal, as is done by the Pennsylvania Public Service Company law, must be deemed to deny due process of law."

Judge Orr. Let me see if I follow you. Are you quoting from your authorities here?

Mr. Chapman. The regulation is supposed to be adopted under this power which says that the association can do nothing except address petitions to them. We can have no powers in our officers at all.

Judge Orr. That is the regulation?

Mr. Chapman. Yes, your Honor, if this act is valid they have that power. If the act is not valid it is unconstitutional and they haven't got that power.

Judge Orr. Do you think they would go that far if this were a constitutional act?

Mr. Chapman. I don't think they can go that far.

1087 Judge Orr. If the act is constitutional, could they then go that far?

Mr. CHAPMAN. Why certainly. Why not? If the act is constitutional they have the power to do what they want to do.

Judge ORR. In setting up the reasonableness of it?

Mr. CHAPMAN. Why not?

Judge ORR. Other laws would intervene. They could not do that capriciously or unreasonably just because they have been delegated some power.

Mr. CHAPMAN. They have, your Honor.

Judge ORR. I know that, but there would be other laws. You claim that they have, but there would be the proposition that under other regulations it would be unreasonable or capricious or something of that kind. You can restrain those acts even though the statute itself is constitutional.

Mr. CHAPMAN. We would have to violate the law to come to court. Of course we have done that already. We have had our officers verify the pleadings and we have had our directors meeting to ratify some of the acts in an attempt to clear property that they have tangled up.

Judge HALL. Is there a provision in the law that would put you in contempt of the Conservator or administrator?

Mr. CHAPMAN. I hate to answer that offhand, but my impression is that they do not have the power to punish by contempt. I don't think they have that either. Congress never gave it to them.

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Judge ORR. You were citing those merely to show the acts that have been done?

Mr. CHAPMAN. To show what they have done with the language that they thought they had.

But I would like to go back to your point again. You say if they act unreasonable. Your Honor is a little ahead of me. In one of the cases that I have here, the regulation has to be reasonable to be valid. That is very true. But I contend that this act of Congress attempting to give this power so broadly and so unlimitedly is unconstitutional in itself. I don't think that you can give anyone, as I say, a five-man board or a one-man board, or any one man, the power to create courts. Those courts to be of any use to anybody would have to have a subpoena power. If you discarded that subpoena power they would have to have the ability to punish you or refer to some other court to punish you. What chance would we have?

Assume that we went to the hearing. That is one of the things we are seeking to restrain. Assume we wanted to produce some testimony from adverse and hostile witnesses. Where is they any authority in this act for anybody to set up that hearing, anybody to set up that administrative officer, for anybody to issue a subpoena to compel you to attend, and furthest of all, anybody with any
1089 power to punish you would refuse to testify. There is no due process in that. Of course the due process goes further than that; it goes to the question of judging their own acts. I will get to that point in a few minutes.

But sticking just to the question of what powers they were given here, either the power is given or it isn't given. It doesn't depend on what you do with it after you get it. If you haven't got the power you can be as reasonable and just as you know how and your act is still void. If you do have the power and you are capricious and arbitrary then the only review is such review as was provided in the act giving that power. That is our position in the whole situation.

Judge HALL. Mr. Chapman, in setting up the Home Owners Loan Act, the Savings and Loan Associations Act and the insurance of deposits and Government aid, do you maintain that Congress did not have the power to authorize the appointment of a Conservator or a receiver at all?

Mr. CHAPMAN. No, your Honor, I do not. I say that the Congress in setting up—we are not attacking the whole act, incidentally. I would like to say we are only attacking these portions.

Judge HALL. Authorizing the appointment of a Conservator and the merger?

Mr. CHAPMAN. The merger, the liquidation, the reorganization, the Conservator and the receiver with-
1090 out any factual finding, without any recourse to the courts, without any limitations of how those powers are to be exercised.

Judge HALL. Speaking specifically on the limitations as to how those powers could be exercised, you conceive that there could be a constitutional authority authorizing mergers, liquidations and the appointment of a Conservator?

Mr. CHAPMAN. Definitely, but that this is not the way.

Judge HALL. What would it need?

Mr. CHAPMAN. It would need due process of law, it would need an opportunity to be heard before you merged, as the Los Angeles bank was merged, and to be heard before or immediately after you are seized, as we were seized, to be heard before a fair and impartial tribunal not interested in the seizure, such as this honorable court or any Federal Court, and limitations on when and how you could be merged and seized.

Judge HALL. What would those limitations be?

Mr. CHAPMAN. I would say this, if a financial institution is insolvent, clearly there should be a power to take that institution over and prevent further disposition of its assets.

Judge HALL. Or threatened with insolvency?

Mr. CHAPMAN. Yes. I think that when you endanger the general public in that way under the police powers they can be protected. But I don't think that you can give the power here to just merge them as you feel
1091 like it, consolidate them as you feel like it, or reorganize them whenever you feel like it, putting in a Conservator with or without cause. That we contend is a denial of due process.

But answering your Honor's question, we have building and loan association legislation in the state of California, we have banking legislation in the United States—and, strangest of all, the Government has seen fit to cite those in support of their action—and in those regulations by the legislature on the Bank Act within 10 days the aggrieved party appeals to the Superior Court and the Court finds whether the seizure was constitutional or not. Under the Building and Loan Act I think it is a little longer time, either 15 or 20 days.

Judge HALL. Is there a norm or standard under which they can seize it?

Mr. CHAPMAN. It is set forth in the act itself.

Judge HALL. What is it?

Mr. CHAPMAN. The danger of insolvency or an actual insolvency or danger to the general public. That is to be reviewed by the courts almost immediately.

As your Honor mentioned on the National Bank Act,

which has been held constitutional, the comptroller of the currency gets his authority to seize from the court. He doesn't go down there and grab any place he happens to want to grab.

You also mentioned the question of appointing a
1092 Conservator. That, incidentally, was an emergency statute enacted in 1933, during the bank holiday, or right after, and we have a couple of authorities on the question of emergency statutes being limited to the emergency.

Judge HALL. You say there are other provisions in the law which requires it?

Mr. CHAPMAN. On the National Bank Act, your Honor?

Judge HALL. Yes.

Mr. CHAPMAN. I think it is Section 199, speaking from memory, but I know that the index at the start of the act will indicate where the Court has inquired.

On the question of this emergency situation, this particular act, the Home Owners Loan Corporation Act, was adopted in 1934, during the time of one of the worst financial depressions.

Judge HALL. '34 or '33?

Mr. CHAPMAN. It was amended in '34 and adopted originally in '33.

In the Chastleton Corporation v Sinclair, a United States Supreme Court case, 264 U. S. 543, reading from the syllabus:

"Statutes—effect of passing of emergency.

"A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases of the facts change, even though valid when passed."

1093 I still don't think, in 1933 or any other time, that you can give a board arbitrary power to merge, seize, liquidate, put in a receiver without any factual limitation whatever; but even if you could, and that was upheld under the emergency situation, surely a financial institution which has grown from $7,500 in 1934 to $26,000,000 in 1946, which has a surplus of $1,300,000, is not insolvent or in any danger of insolvency, and it doesn't need the drastic thing that was done here—just close it in an instant. The results were quite drastic. One-third

of the deposits of that association has been withdrawn. In the first week $6,000,000 was withdrawn.

I am going into this factual situation just to help the constitutional question of those powers that were given. I can't say, in reading this act, that the act doesn't try to give them that power. I don't see how any act, except just a plain blank check, could give anybody any more power than is given under this one. But I do say that Congress can't give away its powers that way, not under our Constitution.

I don't say that they cannot set up a valid system with proper checks and restraints, saying that an association that is insolvent can be closed, an association that is impaired can be liquidated, or if, as your Honor says, they are in immediate danger of insolvency, that a Conservator cannot be appointed subject to an immediate court review.

Now the hearing that they tell us that we must
1094 exhaust, our administrative remedy, is a remedy of going before the very men that seized us and asking them to judge us, judge us and them, judge between yourselves and the people that you seized. That is the administrative remedy that we are supposed to exhaust.

I am sorry to say that I got in the case just two or three days after the seizure. I am sorry to say that I asked for a hearing. I was innocent enough to believe that we would be given an impartial hearing. I learned better when the Congress of the United States took the testimony in this matter, extracts of which have been incorporated in the motion to restrain the preliminary hearing.

The gentleman now gives us the affidavit that he is the one who made the seizure order and he told the Congress of the United States that they will never get that association back. They want us to go down there and let them hear the question. They want us to go to that sort of an administrative hearing, and they tell us and they tell your Honor that you have no power to even hear this constitutional appeal until they have exhausted our administrative remedies. That sort of an administrative remedy is also a denial of due process. That is so elementary that I am amazed that that contention can be made.

However, pages 23 to 31 of my points and authorities go into a few questions on the bias and prejudice of either a judge or an administrative officer and that it is a
1095 denial of due process. The case of Tunney v Ohil, 273 U. S. 510:

"Officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided.

"Accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him."

All right. These people have seized an institution with 26 million dollars in it, 8 million dollars of which is gone. Have they any pecuniary interest in sustaining whether they were right or wrong in making that seizure? Were they interested in the outcome of that case? Some of the National Labor Relations Board proceedings went almost as far. In the case of Inland Steel Company v National Labor Relations Board, 109 Fed. (2d) 9, which is an administrative hearing——

Judge HALL. What has that to do with what it says in the statute?

Mr. CHAPMAN. It comes right down to this point, your Honor: Under this statute they can make their own courts if the statute is valid. They have made their own courts. This is how it is working out. There is no other way to test this general kind of language. Either you can write a blank check and it is valid, or you can't. I am
1096 trying to show what they have done under it, not that it has anything to do with their authority but to show you how utterly outrageous they are and beyond any concepts of constitutionality.

I won't go any further on those cases, but it really comes down to this, I think, to sum it up: Congress can delegate, if this is valid, to five men or to one man the power to make the laws of the United States, the power to decide when they will merge, when they will liquidate and when they will appoint a receiver for a perfectly solvent going business. Congress can also delegate to those same gentlemen the power to set up a tribunal, a court, if you please, they make their own jurisdiction, they decide in one case

what evidence they will take in that case, not any general rules—their very order setting up this hearing withholds from the hearing officer the power to decide the case—and they decided in this particular instance that they are going to let anybody else interested come in, and tomorrow they may make an order saying that we are going to have a hearing and nobody comes, or only the association, and if this legislative delegation is valid they certainly have that power.

Also Congress has given them apparently the power, in this court they create, to make their own rules of evidence. They will decide whether or not there shall be cross examination and they will decide it differently for each individual hearing that they bring. They will
1097 decide whether or not certain testimony shall be received. Maybe we won't bother with any evidence, let's have anybody write us a letter. If this delegation of power is valid they can do that. Let's not even bother to call the witnesses in. Let anybody write a statement to us, and that is evidence, and we will accept it.

Congress has given them that power, if they have any power under this act at all, and if someone doesn't choose to answer they also have, by implication, the power of subpoena. There is not a word in here about any pleadings. It is a court. Apparently it is to be final. Nobody has to make any allegations or charges; nobody has to make any answers. Just a description of it shows how impossible that situation is. That is why we contend that the Congress, when it attempts to do things like this, is limited by the due process clause of the Constitution and it must in the act say, you have a hearing before the administrative tribunal, that tribunal has the following powers, and give them, and provide for an appeal or review by some judicial tribunal somewhere.

Now it is very true in the Emergency Price Control Act they set up their own hearing boards, and they provide for an appeal to the tax courts. There is only one judicial review, but there has to be a judicial review. That is the case I have already read you, where they seek to prevent or deny the right of a judicial review.

You can go a long ways, and I think that we have
1098 under the war situation, delegated a tremendous amount of authority, but it is delegated in the acts.

of Congress, the restraints are set up in the acts of Congress, and the judicial review is provided in the acts of Congress. It is our contention here that this arbitrary power, without any limitation whatever to merge, to consolidate, to have a receiver or a Conservator, to reorganize without any factual background or basis or any showing of any need—let them determine all that for themselves—that we respectfully submit is unconstitutional.

Judge HALL. You were speaking a moment ago about the termination of the emergency, that the Court had the power to determine that the emergency which created a power under which an act, regulation or order was made, had terminated.

Mr. CHAPMAN. Yes, your Honor.

Judge HALL. Were you addressing your remarks to some point? I couldn't quite understand what you were addressing that point to. Were you addressing that to the proposition that Executive Order 9070 is now void and one man ceases to operate as a board because the emergency has passed under which he was created?

Mr. CHAPMAN. I didn't intend to when I made that argument, but I see the point and I think very well of it, and I would like to adopt it. I wish I had thought of it at the time. I would like to adopt it now.

Judge HALL. What was your point in talking 1099 about the end of the emergency?

Mr. CHAPMAN. My point is this: We know that when the national banks were all closed every bank in the country was closed. We had this so-called Conservator as an addition to the National Banking Act, just as we have had recently rent control under the former war emergency and may have it again, but I say that now whatever authority may have been necessary in 1933 certainly cannot be used to seize and liquidate and merge a perfectly solvent institution.

I realize that there are many other counsel waiting, and I am pretty deeply engrossed in the subject and I would probably go on forever if no one stopped me, but I think I have made the elements of my constitutional position. I haven't attempted to go into the questions of if this act is constitutional, the abuse of authority and many of those

things which your Honors have indicated should not be brought before the three-judge court.

Mr. WALLACE. Your Honor, as counsel for one of the two interpleaders, I have very little to say as addressed to the primary motion so far as the preliminary injunction to restrain the merger of assets is concerned. However, as counsel for the Title Service Company, the interpleader, with whom is involved the title of some 8000 parcels in this county, we have joined in the motion to restrain an administrative hearing and, in my humble opin-
1100 ion, the passage upon that question of the constitutionality of the act by this three-judge tribunal is necessary to determine whether or not such a hearing could or should be heard, principally whether or not it could be heard.

As both Messrs. Chapman and Westover have pointed out to the Court, the act under which the Board has presumed to act, it now being a one-man board, is wide open, stating that the Board shall have full power to provide in the rules and regulations hereunder authority for the handling of these associations, reorganizations, consolidation or liquidation, but nowhere in that act, Section 5(d), is there any proviso whatsoever for the establishment of any quasi-judicial body for the hearing of any of these charges, airing of any complaints, making of any, should we say, excuses—for lack of a better word I will use that —for the acts of the association which may have been done.

One of the elements of due process, as I understand it, is that of notice. As set forth in one of our memoranda of points and authorities, I have stated that there was no notice to any of the other interested parties. The counter made by the Government to that is that notice was published in the Federal Register and that, under the regulations, in and of itself was sufficient notice, not only to the other defendants involved, Title Service Company among others, but also to some 16,000 depositors.
1101 That definitely, in my estimation, is one of the factors in the lack of due process.

In all of the cases cited by the Government with reference to these administrative hearings, at least all of which I have read, there have been no cases in which the hearings

have been upheld or in which injunctions have been denied against the holding of such hearings, and the statute under which the complaining party was complaining in and of itself prescribed what hearings should be had and prescribed for a judicial review in some cases. Particularly in the petroleum cases the statute provides for a hearing by an administrative body and a review by the Circuit Court of Appeals. There are others which provide for administrative hearings—Mr. Chapman adverted to one of them—where a review by the Board of Tax Appeals is had. And in seeking some basis to urge before this Court, we are put in the position of proving a negative, which is almost impossible, therefore we must draw the analogy from those cases in which injunctions have been granted against statutes such as this where there has been no proviso made, no yardstick, as Mr. Westover has said, no criteria of any kind established, and I cannot, from a reading of this brief six- or seven-line statute in any way feel that there is any justification for the Board to do which it has done, that is, to make up its own rules, its own regulations, provide what notice should be given, come into court and state that the publication of a notice in
4102 a very infinitely small red document such as the Federal Register constitutes due notice to the 16,000 depositors, much less to the various other active participants in this litigation.

As to why the Title Service Company is interpleading in this matter, it is that the title to some 8000 parcels of real estate in this county are very definitely involved, and if the members of this Court were to listen to my telephone ringing day in and day out asking as to who was going to clear the titles, you will know whereof I speak. It is our contention that if this hearing is allowed to be held and an adjudication be made by the Home Loan Commissioner, or through various officers acting under him without any possibility of judicial review, it will further encumber or cloud the titles to all of the approximately 8000 parcels of real property, of which only the 174 involved here are in the process now of being cleared.

Mr. Tremaine. For the other interpleading defendant here, I am in very much the same position as Mr. Wallace who has just spoken.

Judge ORR. Pardon me just a moment, please. I think we will take a recess for about 10 minutes.

(Short recess.)

1103 Mr. TREMAINE. As I stated just before the intermission, representing the other interpleading defendant here,—I don't wish to go into an extended argument, but only to bring into the consideration one element which I think is very important; that is, viewing the question of the constitutionality, to go back to the old American principle that I think we all learned in school, that we are governed in a government of laws, and a business man, in conducting his business, is entitled to some guide post about what is proper and what is improper.

When we consider the delegation of powers by Congress to the various administrative bodies, it brings up the question, how far we might go under the bank act. I wish to pass this thought for consideration, that there is, in my opinion, a distinction between proper delegations, some of which apply to conditions of emergency, some of which apply to what we might consider to be standard business situations. I think possibly the right of the Comptroller of the Currency to appoint a conservator, or even Commissioner Fahey here to appoint a conservator, might be proper under an emergency condition, and in that, too, that should be followed by an administrative hearing; and I think that idea more or less goes through the various court decisions that have been cited in the points and authorities on both sides.

If the situation is an emergency, there is still the
1104 requirement of due process for some sort of review afterwards by an unbiased body. I won't try to repeat Mr. Chapman's argument on that. He has done it better than I could. But I have been greatly impressed in reading the various cases and by Justice Cardozo's concurring opinion in the Schecter case, as being the key to the line of limitation as to what delegation would be constitutional, and what not. 293 U. S., 435:

"There has been no grant to the Executive by any roving commission to inquire into evils and then, upon discovering them, do anything he pleases."

"He has choice, though within limits, as to the occasion, but none whatever as to the means."

Here in the case before us is an attempted delegation, not confined to any single act. That I think is the sort of delegation of power that Congress left open, in not providing anything but a roving commission to the Board. I want to make that distinction, that the authority was originally given to a Board, the majority of whom I believe had to be members of some political party. Now we find a single commissioner who has that power, which goes far beyond what we believe follows the chain of argument cited in various cases to be a proper delegation. That is the only point I have to submit to your Honors.

Judge HALL. If I might ask a question of Mr. Chapman. Do you have the act before you? In Section 5 of 1464 (e) you will see there is no norm or standard of conduct.

Mr. CHAPMAN. Yes.

Judge HALL. Or canalizing,—I think Justice Cardozo used that word one time in an opinion,—of authority. Would not Subdivision (e) of Section 1464, Section 5, be a fulfillment of the requirement?

"No charter shall be granted except to persons of good character and responsibility, nor unless in the judgment of the Board a necessity exists for such an institution in the community to be served, nor unless there is a reasonable probability of its usefulness and success, nor unless the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions."

Mr. CHAPMAN. I don't see how, your Honor, that is going to give any standard for merger, liquidation, appointment of a receiver or a Conservator, and the equalization of the capital. That has to do with the chartering of the association. I agree with you. I want your Honor to understand we are not attacking the entire act.

Judge HALL. I understand that. But I think under the cases you are not restricted to looking to the particular section under which authority is given, but you are required to look to the whole act to see if in the act itself there are norms and standards, and Congress recognized them, after the Schecter case, and the Panama Refining case, and set forth a preamble

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of the additional objects and standards to be followed; so if elsewhere in this act a standard is to be found as a guide to the administrator, or to the Board, in taking over an institution and liquidating it, or appointing a conservator, the constitutional requirement is satisfied. My query is directed to this particular section.

Mr. CHAPMAN. No charter shall be granted except to persons of good character and responsibility, etc. That has nothing to do with consolidation, merger, liquidation. There is nothing under the section your Honor just read to me, or elsewhere in the act, which I can find, which limits, or says what associations shall be merged into others, or where, whether they should be solvent or insolvent, what association should be liquidated, or when or where, or anything in the act which gives them power to constitute their own court, arrogate to themselves the power to subpoena, rules of pleading, rules of practise, or to determine evidence. Neither the section I have read, or your Honor has read, gives any limitation on that.

Judge ORR. Is it your contention that that section gives authority to create, but does not give authority to destroy?

Mr. CHAPMAN. That is right; at least without due process.

Judge ORR. That is your position?

1107 Mr. CHAPMAN. Yes.

Judge HALL. Section (a) of 1464 says:

"In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe,"

Mr. CHAPMAN. Yes.

Judge HALL. So, when this association accepted the benefits and continued to receive them, under this act, did they thereby lose their right to challenge the constitutionality of the act, or any acts done under rules and regulations?

Mr. CHAPMAN. My contention is they did not, your Honor.

Judge HALL. What is the basis of your contention?

Mr. CHAPMAN. The charter. The fact that the doc-

trine to which your Honor refers, I believe refers to an equitable estoppel. That is only used to prevent a wrong, and not condone or perpetrate one. I don't think anyone would say, in starting an association under this act, we acquiesced and acknowledged, under contracts which ceased to give us notice, and to appeal to a court.

Judge HALL. Did it give you a right to challenge the constitutionality of this act? You accepted the benefits of it.

1108 Mr. CHAPMAN. That is true. I don't think, being organized under a five-man board, it gave a one-man dictator the right to destroy it, and preclude us from appealing to a court.

1109 Your Honor will bear with me just a second. I have a case on that estoppel point that I wish to refer to. South Ottawa v. Perkins, a United States Supreme Court case, 94 U. S., 260, 24 L. Ed. 154.

Judge HALL. That is in your brief?

Mr. CHAPMAN. That is on page 43 of the points and authorities of the defendant Long Beach Federal Savings & Loan Association.

Judge HALL. I better write it down because you have all cited so many cases here. What page?

Mr. CHAPMAN. Page 43, your Honor, starting with line 20.

Judge HALL. I do not find it. When was that filed?

The CLERK. That was filed today.

Mr. CHAPMAN. That was filed today, your Honor.

Judge HALL. Very well.

Mr. CHAPMAN. The factual situation back of this case, your Honor, was this: A municipal corporation of a city had issued bonds under an act of the state legislature and it attacked the act under which it had issued the bonds, and the point was raised that, having issued bonds under the act they were estopped and denied validity. The Supreme Court said:

"We cannot assent to this view. There can be no estoppel in the way of ascertaining the existence of a law. That which purports to be a law of a State is a law or it is

1110 not a law, according as the truth of the fact may be, and not according to the shifting circumstances of parties. It would be an intolerable state of things if a docu-

ment purporting to be an Act of the Legislature would thus be a law in one case and for one party, and not a law in another case and for another party; a law to-day, and not a law tomorrow; a law in one place, and not a law in another in the same State. And whether it be a law or not a law is a judicial question, to be settled and determined by the courts and judges. The doctrine of estoppel is totally inadmissible in the case."

Now applying that to this situation, all that we can be concluded by is the language of this act, even assuming that we were estopped, and nowhere in this act did they attempt to set up the court they insist that we come to. And in our charter, which is made an exhibit, they say that we shall have the power to liquidate.

Judge HALL. Who is "we"?

Mr. CHAPMAN. The association itself, your Honor. I don't believe that estoppel properly comes up until it is pleaded in defense, but as long as your Honor has raised the point I will read from the charter.

Now on the question of estoppel, if it is raised at all it is raised by the charter, and though I am answering your Honor's question my own thought presented in this brief is that estoppel is a doctrine which must be affirmatively pleaded by the defendants when they make their answer. It does not appear from our complaint and therefore is not to be treated on a motion to dismiss. But I do not want to put aside my points on a purely technical situation. I think that the question of estoppel is well to be reserved to be gone into fully at the time of trial.

1111

Nevertheless they gave us a charter, and, reading from their copy of it as they have our original, incidentally, down among the seized documents—we will assume for the purposes of this argument that this copy is correct:

"The Association shall have the power, among a number of other things, to wind up and dissolve, merge, consolidate or reorganize in the manner provided by law and rules and regulations made thereunder."

It goes a little further:

"The Association shall have such powers as are conferred by law and shall exercise its powers in conformity with Home Owners Loan Act and all laws of the United States as they now are or may thereafter be amended, with

the rules and regulations made thereunder which are not in conflict with this charter.

Now by the charter they gave us the power to wind up, dissolve, merge and consolidate. In other words, we have never consented, even by estoppel, to an involuntary, 1112 arbitrary merger. Today we are in Long Beach, tomorrow we are in San Francisco, next week we are in Baltimore and the week after in Washington. That is the constitutional point that we raise here.

Your Honor is going to the question of the Conservator. That also is dangerous, but it isn't one-tenth as bad as the merger and liquidation. The Conservator at least in this situation has given us some chance to get to court. But if they treated us like they treated the Federal Home Loan Bank in Los Angeles, merged and liquidated one day without any notice, that is the power that we claim would be unconstitutional.

We have never consented, either by being organized under this act or in any other way to, first, a one-man dictatorship, which was not in force when our charter was granted and, second, to give up our constitutional right of due process. These things that are done and have been done in this case can only be justified if there was due process, a hearing before an impartial tribunal such as yourselves, and that hearing to be provided in the act itself.

Now the question of estoppel is an equitable doctrine. That cannot be raised by a wrongdoer. Someone who has confiscated wrongfully and maliciously millions of dollars worth of property cannot say to the person whose property is seized, "Oh, no, you can't raise that, you 1113 say anything about that, when you started your existence you consented that whatever we wanted to do to you whenever we decided to do it was all right."

Judge HALL. It seems to me the point is in the case nevertheless because, by the plaintiff's complaint, by your cross-claim and interpleader, you allege that you are an association or a corporation organized under this law.

Mr. CHAPMAN. That is true. We said under the laws of the United States. I don't believe we specifically referred to this particular act, but we don't deny that we were organized under this act.

Judge HALL. Very well.

Mr. CHAPMAN. We do think very emphatically that a doctrine as drastic as estoppel should not be applied at this stage of the case on a question of battle of affidavits. If the act is unconstitutional then a trial on the merits is the time to go into the doctrine of estoppel. If the act is unconstitutional it doesn't matter whether we are estopped or not. If the act is good, it is law. But if the act is unconstitutional and is to only have its force because we were organized under it with a five-man board before these amendments, that is something that should be inquired into on the trial of the merits.

Any further questions?

Judge ORR. The question arose as to whether or
1114 not, if Section 5 were declared unconstitutional, what remedy would there be against an organization such as yours if there was wrongdoing and on the face of it what remedy would the commissioner would have?

Mr. CHAPMAN. The very remedy we have attempted here, your Honor, in defense.

Judge ORR. Equitable procedure in court?

Mr. CHAPMAN. To go into court, the way the comptroller of the currency and the building and loan commissioner of the State of California and other officials claiming that power do. They don't try to be their own judges, juries and prosecutors. They may initially try to protect the situation but they quickly get judicial approval and judicial backing up of that authority.

Judge ORR. It would have to go into court in the first instance then?

Mr. CHAPMAN. Yes.

Judge HALL. Or a federal equity receiver?

Judge ORR. Or a federal equity receiver.

Mr. CHAPMAN. I don't believe I understand your Honor's point.

Judge ORR. Supposing that section were declared unconstitutional. I don't know, but this is just another one of those features that you consider in determining that.

Then supposing there was a gross misuse of the
1115 powers by the officers of this company. Supposing they were dissipating the funds, misusing all of the funds, then how would the commissioner reach you?

Mr. CHAPMAN. He could have a temporary restraining order, being a federal official without bond. He would only need to present to some federal judge that situation and the association would be prevented, on the issuance of that court order, ex parte instantly from doing any harm.

Judge ORR. He would have to go into the courts.

Mr. CHAPMAN. Some court, yes.

Judge HALL. He has the right to be sued, to sue and be sued?

Mr. CHAPMAN. The commissioner?

Judge HALL. Yes.

Mr. CHAPMAN. Yes, your Honor.

Now I would also like to suggest along that line—it may seem presumptious on my part—but this section that we have attacked certainly should be amended by congress. Congress thinks somewhat along that line, as they have conducted an investigation into this situation, and if this is declared unconstitutional I think we can confidentially predict that it will be replaced by a new section which does provide ample authority to protect against a wrongdoing association and also due process of law and protection to the innocent shareholders so that they won't go to bed one night with a 26 1116 million dollar association solvent and wake up next morning with it in the hands of the Government and nobody knows why or how. I think that there are remedies. I see your Honor's point very clearly, that complete license and freedom is not, on one hand, to be granted, nor should complete arbitrary and confiscatory powers to be exercised at the whim and pleasure of some official, as we have alleged here, maliciously and vindictively, be allowed to exist.

Of course the constitutionality of that act is the question before you, but I am going to the two sides as you have indicated. There will be in the interim, assuming this would be declared unconstitutional, there would be a short interim before congress did something about that, and in that period I don't see why the Government should feel so terribly aggrieved if they had to go to court and get a temporary restraining order, without bond and without notice, and let a judge pass on the

things that they are complaining about rather than pass on it themselves and say that nobody can ever review what they have done.

Any other questions?

(No response.)

Mr. WALKER. Am I next in order, your Honors?

Judge HALL. Only plaintiffs and interpleaders have talked so far.

Judge ORR. Obviously you will not finish 1117 tonight, Mr. Walker, so I think perhaps we had better take a recess until 10:00 o'clock tomorrow morning.

Judge HALL. How long will you be, Mr. Walker? Can you give us a suggestion of how long you will want?

Mr. WALKER. Well, your Honors, if the court limits my argument to the constitutional questions I think an hour and a half to two hours will be sufficient. Counsel on the other hand have wandered a bit afield and gone into the administrative hearing and some of the other features in the case. If I am compelled to answer and argue all of these matters, it will take three or four hours.

Judge ORR. On those matters, the only way we could consider that is just in determining that constitutional question.

Mr. WALKER. As it affects the constitutional question?

Judge ORR. Yes. If you want to answer and show where it doesn't?

Mr. WALKER. I think I can conclude tomorrow morning then between 10:00 and 12:00.

Judge ORR. We will be in recess then until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:45 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Tuesday, July 16, 1946.)

1118 In the United States District Court,
Southern District of California, Central Division

WILLIAM ORR, PEIRSON HALL, DAVID LING,
Honorable Judges Presiding

No. 5421-PH—Civil

PAUL MALLONEE, C. H. NEWHOUSE, AND WINNIE BUCKLIN, ETC., PLAINTIFFS *v.* JOHN H. FAHEY, INDIVIDUALLY, JOHN H. FAHEY, AS CHAIRMAN OF THE FEDERAL HOME LOAN BANK BOARD, A. V. AMMANN, ETC., ET AL., DEFENDANTS

Reporter's transcript of proceedings
Filed Oct. 15, 1946

Place: Los Angeles, California.
Date: July 16, 1946.

1120 APPEARANCES

For the Plaintiffs: Westover & Smith, 215 West Sixth Street, Los Angeles 14, California; by Wyckoff Westover, Esq., and Steadman G. Smith, Esq.

For the Defendant Title Service Company: Thomas & Wallace, 602 Jergins Trust Building, Long Beach, California; by Harry O. Wallace, Esq.

For the Defendant Long Beach Federal Savings and Loan Association: Charles K. Chapman, Esq., Ocean Center Building, Long Beach, California.

For the Defendant A. V. Ammann, individually, and as Conservator: James M. Carter, United States Attorney, Los Angeles 12, California; by Ronald Walker, Assistant United States Attorney.

For the Defendants A. V. Ammann and John H. Fahey: Mose Silverman, Esq., Los Angeles, California.

For the Defendant and Cross-Complainant R. H. Wallis: Raymond Tremaine, Esq., 210 West Seventh Street, Los Angeles 14, California.

1121 LOS ANGELES, CALIFORNIA,
Tuesday, July 16, 1946, 10:00 A. M.

Mr. WALKER. Shall I proceed, your Honors?

Judge ORR. Yes.

Mr. WALKER: If the court please, there were certain arguments and statements of purported facts, which deal

with innuendo, from counsel yesterday, which I feel in justice to the public officials here involved should be answered, and I should like to spend about five minutes of my allotted time in answering those comments, before I get on to the constitutional phases of the question here before us.

Mr. Chapman, in his purported argument which, in my opinion, consisted more of innuendo than points of law, dwelt at length on the accomplished merger of the Home Loan Bank of Los Angeles with the Home Loan Bank of Portland; that is, the two institutions were merged on March 29th, into the Home Loan Bank of San Francisco. Mr. Chapman made a great point of the fact that it does not come within the provisions of the act—the Home Owners Loan Act of 1933, which is under discussion here. Also, he makes a great point of the fact that the regulations do not approve such a merger. He states that this one-man dictator, as he calls Mr. Fahey, overnight removes their property.

Well, that form of argument is rather typical, and for that reason I think I should answer it. The authority for that merger does not come under the Home Owners
1122 Loan Act at all. It comes directly under the provisions of the Federal Home Loan Bank Act, an entirely separate act. I would like to read three portions of that act. Section 3:

"As soon as practicable the board shall divide the continental United States, Puerto Rico, the Virgin Islands, and the Territories of Alaska and Hawaii into not less than eight nor more than twelve districts. Such districts shall be apportioned with due regard to the convenience and customary course of business."

There is more in the section. They could have from eight to twelve districts, and banks were formed. We turn to Section 25 of the same act, which reads as follows:

"Each Federal Home Loan Bank shall have succession until dissolved by the board under this chapter or by further Act of Congress."

Section 26:

"Whenever the board finds that the efficient and economical accomplishment of the purposes of this chapter will be aided by such action, and in accordance with such

rules, regulations, and orders as the board may prescribe, any Federal Home Loan Bank may be liquidated or reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying or
1123 making provisions for the payment of its liabilities. In the case of any such liquidation or reorganization, any other Federal Home Loan Bank may, with the approval of the board, acquire assets of any such liquidated or reorganized bank and assume liabilities thereof, in whole or in part."

1124 There is the authority for this act. It is not by regulation. It is by statute.

Judge Orr. I realize that you are answering the oral argument, but are we concerned w th that here, in a three-judge court?

Mr. Walker. Only in so far as the argument I felt yesterday might leave an erroneous impression in the minds of the court. I am merely trying to clarify it.

Judge Orr. I understand the purpose of your argument, but we don't have to pass upon that, do we? We don't have to pass upon the legality of that merger?

Mr. Walker. Not of that merger, no, although it is set up in the pleadings. Mr. Chapman also referred to certain congressional action.

Judge Orr. You make a note of that, gentlemen, and see if I am correct on that, or not.

Mr. Westover. That is correct. I don't mean to interrupt, but I think that was set up to show the reason for the fear of irreparable damage.

Judge Orr. You will have a chance to answer after Mr. Walker concludes.

1125 Mr. Walker. Mr. Chapman referred to certain congressional action. Now it is true a hearing was held before a special committee of the House of Representatives regarding the activities of the Federal Home Loan Bank Administration, but any reference to such proceedings here is purely evidentiary and has no part in this argument as to the legal status of the act or regulations. And when he predicts what course Congress might take following a ruling of this Court, he is straying too far afield as to the required comment. I thought I should refer to that.

But that is not all. Mr. Chapman has referred again

and again to—and I am trying to use his terms—the unwarranted seizure of our property. In this connection, it is a little difficult for me to know just whom Mr. Chapman represents in this action.

The pleadings show that he purports at least to represent the Long Beach Federal Savings and Loan Association, but his comments indicate to me that he actually represents the deposed board of directors and officers. And, incidentally, that group is apart from the association, that is, the association as an entity. I am rather of the opinion that the deposed board of directors and officers compose another group in some sort of an entity.

But again let me repeat, whose property has been seized?

There has been no seizure in the sense that anyone
1126 has been deprived of any property. The conservator was appointed for the purpose of preserving the assets for the benefit of the shareholders. That is the way the order reads.

This is a mutual institution. It doesn't belong to a board of directors or to the officers, and they cannot come in this court and say "our property has been seized."

The property belonged to the Long Beach Federal Savings and Loan Association prior to the time the conservator took charge and the property still belong to the Long Beach Federal Savings and Loan Association or its shareholders. There has been no change in ownership, only management.

He stated—and this was a gross misstatement—that the association had been closed. It has never been closed, not for five minutes. The conservator opened the doors of the institution at 10:00 o'clock on Monday, May 20th, and the institution has been running ever since.

He has referred to runs which he says are wrecking the institution, or depleting its assets, but the withdrawal of funds are not funds of the association, they are not funds of the officers and directors, they are funds of the shareholders which they have the right to withdraw. And there have been heavy withdrawals, but it is money to which the shareholders are entitled.

Notwithstanding these withdrawals, the surplus of the institution has not been depleted but has actually
1127 been increased by normal payments into the reserve. Semi-annual dividends at the rate of 2½ per cent

per annum was paid or credited to the accounts of the shareholders on July 1st while the conservator was in.

He has referred to the seizure of the association as destroying the institution. It isn't destroying anything, it is simply conserving it until further proceedings can be taken.

Judge ORR. How do you explain that? The reduction of the assets or the deposits from 26 million dollars down to 7 million dollars or 8 million dollars, what effect did that have by reason of your being held by a conservator?

Mr. WALKER. The assets, as you call them, have not been reduced to 8 million dollars. There have been about 8 million dollars in withdrawals.

Judge ORR. About 8 million dollars in withdrawals?

Mr. WALKER. Of withdrawals.

Judge ORR. I see.

Mr. WALKER. Perhaps I should call attention to the difference between the old guaranteed and state chartered building and loan associations and to this type of an institution. The state chartered institution is owned by its stockholders, usually a small group of the directors and officers. They are required to make a substantial investment in that to meet the guarantee provisions
1128 required by the state laws. Depositors in those institutions receive something, I believe it is called a certificate of investment, with rights of withdrawal and a right against stockholders on the guarantee.

But this institution is entirely different. It is a mutual institution and, as I recall, the act says it shall be for the purpose of promoting and insuring long-time financing of homes, and so forth. It is a mutual institution. A depositor—I should avoid that term—nevertheless one who deposits funds in this type of an association, the federal association, becomes immediately a shareholder in the association. Now he can leave his money there, he can receive his dividends or he can withdraw it at any time.

Now true the capital available for investment perhaps has been reduced by withdrawals, and yet the exercise of that right of withdrawal, or the right of withdrawal itself, has not been changed in the slightest by the appointment of the conservator. The shareholders are simply exercising the rights which they had before and which they had afterwards.

Judge HALL. How does this institution make its profit?

Mr. WALKER. By loans.

Judge HALL. By loaning money?

Mr. WALKER. By loaning money; that is right.

Judge HALL. So they have 8 million dollars less to loan now?

Mr. WALKER. That is right.

1129 I was also somewhat amused when Mr. Wallace made such a point of the fact that the Title Service Company, for whom he supposedly speaks, received no notice of the administrative hearing. I do not wish to be led in my strong feeling on this matter to the position taken by other counsel in testifying in the case, but it is a matter of common knowledge to all of us that the officers and directors of the Title Service Company are identical with the former officers and directors of the Long Beach Federal Savings and Loan Association. The notices in each case, both of the appointment of the conservator and of the administrative hearing, went to Mr. Gregory, who was the president of both institutions, so while he is making a point of notice, it is not very persuasive.

Mr. WALLACE. Pardone me, counsel. May I cite that as a misstatement of fact. Mr. Gregory is not the identical officer in each of the organizations, and wasn't:

Mr. WALKER. I am sorry if I misstated it.

Mr. WALLACE. He is an officer of both.

Mr. WALKER. The board, however, is identical. I want to be corrected.

Mr. WALLACE. No, it is not, as far as the respective officers are concerned.

Mr. WALKER. But Mr. Gregory is an officer.

Mr. WALLACE. He is an officer of both boards; yes.

Mr. WALKER. I am sorry if I misled the Court.

1130 I didn't mean to do it intentionally.

Mr. Wallace also stated that the shareholders did not receive notice of the administrative hearing. Well, now, the commissioner doesn't have a list of the names and addresses of all the shareholders. They are constantly changing. Certainly the commissioner is not put to the duty of ascertaining, purely on speculation, all who might have an interest in an administrative hear-

ing and give them actual notice. Constructive notice was given by publication in the Federal Register and a lot more actual notice has been given by proceedings here.

Now there are a few more points raised by counsel which do not affect the unconstitutionality of the act but I would like to say to the Court, and also for the benefit of the many people in the courtroom, many of whom are obviously shareholders in the institution, that the institution is solvent. There has never been any question of that at all. Shareholders are not going to lose any money, whether they leave it in the institution or take it out, whether the institution continues to operate or whether it liquidates. The shareholders are protected.

Now counsel charges that the action of the Government agents have started runs on the association. A glance at the withdrawal records of the institution will show that there have been two or three successive
1131 runs which have been followed directly from inflammatory propaganda that was put out by the officers of the committee or former officers and directors. This is innuendo, I know on my part, and I shouldn't have intimated it.

Mr. WESTOVER. I would like to recite in the record that the Shareholders Committee has not put out any propaganda, and I do cite counsel's statement is misconduct.

Mr. CHAPMAN. I would also like to state, your Honor—

Judge ORR. Gentlemen, we have been rather lenient here allowing answers to statements, but we are not concerned with those situations to which you are now addressing the Court.

Judge HALL. Let us find out what the law is, what you contend it is.

Mr. WALKER. I will be very happy to put aside any further comments and get down to the law.

Judge ORR. If counsel will confine himself to that, the Court will be very happy also.

Mr. WALKER. Since it is the first duty of any Federal Court to inquire into its jurisdiction, I know that the Court will not be offended when I suggest that there may not be jurisdiction here for a three-judge court.

My point is this, the Home Owners Loan Act, which is involved here, is not itself implementing at all. Section 5 of the act which was discussed yesterday, Section 5(d), merely permits the board to provide rules and
1132 regulations which permits the formation, the chartering, the operation, the control, of the federal savings and loan associations.

So my point is based on this in law, that it is the operation of the regulations which plaintiffs seek to restrain, not the operation of the act itself. I will refer to the act, if I may be allowed a minute to find it, your Honors.

Reading Section 380 (a):

"No interlocutory or permanent injunction suspending or restraining the enforcement, operation, execution of or setting aside in whole or in part any act of Congress."

Now I don't believe here that the injunction suspends or restrains the enforcement, the operation, the execution of or setting aside any act of Congress. It does have precisely that effect upon the regulations that are issued pursuant to the act.

Now there is some authority, and I would refer the Court to my memorandum in opposition to the motion for a preliminary injunction.

JUDGE HALL. Is that different from your points and authorities in support of the motion to dismiss?

Mr. WALKER. Yes, it is. It deals with the constitutionality of the act. On page 5 of that memorandum I have set out a little more in detail my reasons and the authorities.

1133 Mr. WALKER. The case of Jameson v. Morganthau, cited on page 6 of the memorandum, 307 U. S. 171, a citation which I have given, seems to preclude a three-man court from sitting in a case of this nature, where its regulations, not the act itself, is under attack.

Judge ORR. What case is that, Mr. Walker?

Mr. WALKER. Pages 5 and 6 of my memorandum in opposition to the temporary injunction.

Judge HALL. Wm. Jameson Co. v. Morganthau?

Mr. WALKER. Yes, your Honor.

Judge HALL. I don't think there is any question but what a three-judge court has jurisdiction to sit in a case

involving the regulations. Counsel's whole argument has been addressed to the invalidity of the law. So I don't understand your point.

Mr. WALKER. It is true they attack the invalidity of the law, and the undue delegation of legislative authority, but they seek to restrain something, and the jurisdiction of the court can only be based upon Section 380a, which refers to the restraint of the operation or effect of a statute.

Judge HALL. Did not the Conesrvator take the position under Section 5 of the Home Owners Loan Act?

Mr. WALKER. Of the regulation issued pursuant to Section 5.

Judge HALL. Section 5 is the statutory source?

1134 Mr. WALKER. It is the statutory source, but it in itself is not self-operating. That is the only point I make, to bring it to your consideration, but surely none of us want the case to go to the Supreme Court and then come back to the District Court simply on the sole ground that there might not be jurisdiction in a three-judge court. I don't want to press the point too strongly.

Judge HALL. Every act done by a public official is done under some statute. Here they are attacking the source of his power, which is the statute.

Mr. WALKER. Legally, there is no question that the source of that power could be attacked in a one-man court, unless it comes under the provisions of Section 380a.

Judge HALL. They can't attack the validity of the regulation. They can attack the validity of the act, assuming the validity of the regulation, and assuming the validity of the law.

Mr. WALKER. I simply urge that under the provisions of Section 380a no injunction shall issue suspending, restraining the enforcement, operation or execution and setting aside of any act of Congress.

Judge HALL. Let me see if I understand you. Do you maintain that the Conservator would have power to have done what he did do without Section 5 (d)?

Mr. WALKER. His authority derived from Section 5 (d), but it is specific.

1135 Judge HALL. If there were no 5 (d) then he would have no power to do what he did?

Mr. WALKER. If it were not for 5 (d) the Board could not set up regulations which empowered him to do what he did.

Judge HALL. If 5 (d) is unconstitutional?

Mr. WALKER. If 5 (d) is unconstitutional it falls; his authority fails.

Judge ORR. The appointment of the Conservator is under this act, and the only power that is given for that appointment is in Section 380a. There is no regulation. The authority for the appointment of the Conservator is not found in any regulation. That must be found in the statute itself. So the object is to restrain the Conservator from taking over this property. The Conservator, if he is illegally appointed,—you can't restrain him. So you have got to go to the source and determine whether or not there exists legislative authority for the appointment of this Conservator, and that must be found in the statute. The Conservator himself is not a creature of any regulation; he is a creature of the statute; and unless that statute is unconstitutional, his appointment is legal, and he can't be restrained.

Mr. WALKER. Unless counsel might succeed in their position that it amounts to seizure of property, and due process.

Judge ORR. That is the only situation that ties in with the proposition of this appointment. The statute
1136 provides a method of the appointment, and the legality of it; but they say it is an unconstitutional delegation of authority, because of the fact that it provides no method for due process. So you must first determine whether under that statute, authorizing the appointment of the Conservator who has taken over the business, it is an illegal appointment or not. So it comes back to the proposition of the determination of the constitutionality of the statute, as I see it.

Mr. WALKER. I hope it does. I merely want to suggest that there might be a question on the point.

Judge ORR. That is the general proposition of the appointment of the Conservator. If it would be under the regulation, that would be a different thing; but here the commissioner has acted under the authority of this statute to appoint a conservator. No other authority exists, does it?

Mr. WALKER. I wonder? Section 5 (d) gives the Board or commissioner power to promulgate regulations which, among other things, includes the regulation to appoint a conservator.

Judge ORR. Those are regulations carrying out the provisions of the act.

Mr. WALKER. Yes.

Judge ORR. Where do you find authority for the appointment of the Conservator unless you go to Section 5? Say, for instance, Section 5 were not existant. You could not argue that the commissioner is given the
1137 right to appoint a conservator, could you?

Mr. WALKER. He certainly could not, if Section 5 were not existant. There wouldn't be any Federal Loan Association; there would be no framework; no power to create a framework under which there could be an appointment made. The only point is, it is given power to promulgate regulations, and it is the operation of the regulations which derives it source from the action. It is the operation of the regulation which appoints a conservator; not the operation of the act.

Judge ORR. It is the operation of a regulation perhaps which defines his actions. The appointment is in the operation of the statute itself. That is the authority to appoint, which must be found in the statute itself.

Judge HALL. Whatever vitality the regulation has it gets it from Section 5 (d).

Mr. WALKER. It certainly does.

Judge HALL. The statute appointing the United States Attorney is not operative by itself, either.

Mr. WALKER. That is right. I think we are ready to proceed, then, to the question of the constitutionality of the act itself, as point 1, as opposed to the constitutionality of the regulations. I will try and argue one at a time, and not both.

Judge HALL. I think the court indicated yesterday that we would not consider arguments on the constitutionality of the regulations.

1138 Mr. WALKER. Very well, your Honor. Does the court care, however, to hear argument on the question of estoppel?

Judge ORR. Yes, I suppose we would have to consider that.

Mr. WALKER. First, then, let me take up the constitutionality of the Home Owners Loan Act of 1933 as a valid delegation of legislative power. There is no quarrel particularly with the cases which counsel has cited. They lay great stress on the Schecter case, 295 U. S., 495 in holding the International Recovery Act invalid and unconstitutional. I will read a short quotation from the court:

"It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of facts determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, Section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction and expansion described in Section One. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered."

1139 I like Mr. Justice Cardozo's phrase, in his concurring opinion, wherein he states the rule that the canalized authority must be within banks to keep it from overflowing. It is our position that this fact does so canalize that authority. I think the Schechter case rule well stated it. Certainly under the law it does not apply to the act.

Another case cited by counsel is Panama Refining Company v. Ryan, 293 U. S., 388. There the court held that Section 9 (c), the N.I.R.A. was void, because it delegated legislative authority to the President. The section involved states:

"The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law." The court said:

"It" referring to the statute "does not qualify the President's authority by reference to the basis, or extent,

of the State's limitation of production. Section 9 (c) does not state whether, or in what circumstances or under what conditions, the President is to prohibit the transportation of the amount of petroleum or petroleum products produced in excess of the State's permission. It establishes no criterion to govern the President's course. It does not require any finding by the President as a condition
1140 of his action. The congress in Sec. 9 (c) thus declares no policy as to the transportation of the excess production." But there is one paragraph which is very helpful here:

"We examine the context" referring to the entire act, "to ascertain if it furnishes a declaration of policy or a standard of action, which can be deemed to relate to the subject of Sec. 9 (c) and thus to imply what is not there expressed."

Section 5 does state a policy; it does provide guides governing the board's rule-making power. Let us refer to the act referring to the standards or guides.

Judge HALL. By the way, counsel, did you get any more pamphlet copies?

Mr. WALKER. I did not. I will try to have some for your Honors. If the court has seen the pamphlet I have in my hand, Section 5, found on page 30——

Judge HALL. Yes. This is the same one.

Mr. WALKER. I would like to go over the first six subdivisions of Section 5. Section 5 (a):

"In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe,"—now comes the standard and guide—"to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as
1141 'Federal Savings and Loan Associations,' and to issue charters therefor, giving primary consideration to the best practises of local mutual thrift and home-financing institutions in the United States."

There is guide No. 1: The best practises of local institutions throughout the United States. And, incidentally, the local state statute here does provide for the appoint-

ment of a conservator without notice, subject to certain conditions.

"(b) Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is therein provided."—That is some control over the shares.—"No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board."

That is probably not as important, I think, as Section (c):

"Such associations shall lend their funds only on the security of their shares or on the security of first liens upon homes or combination of homes and business property within fifty miles of their home office: Provided, That not more than $20,000 shall be loaned on the security of the first lien upon any one such property; except that not exceeding 15 percentum of the assets of such association may be loaned on other improved real estate without regard to said $20,000 limitation, and without regard to said fifty-mile limit, but secured by first lien thereon:" Certainly that is a limitation on the regulation.—"And provided further, That any portion of the assets of such associations may be invested in obligations of the United States or the stock or bonds of a Federal Home Loan Bank: And provided further, That any such association which is converted from a State-chartered institution may continue to make loans in the territory in which it made loans while operating under State charter."

1142

That again does not deal directly with the standard; but (d) does:

"The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger or liquidation of such associations, including the power to appoint a conservator or receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

1143 Now (e) reads:

"No charter shall be granted except to persons of good character and responsibility, nor unless in the judgment of the board a necessity exists for such an institution in the community to be served, now unless there is a reasonable probability of its usefulness and success, nor unless the same can be established without undue injury to properly constructed existing local thrift and home-financing institutions."

Here I might point out that Section (e) also, by implication, provides for the converse of those things.

Judge HALL. In other words, you contend these are guides set forth in the act canalizing the authority to appoint a conservator? Is that your position?

Mr. WALKER. Canalizing the authority of the board in general to make regulations, including that of a conservator; yes.

Judge HALL. Let me put it this way then: Under (d), "the board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger * * * including the power to appoint a conservator or a receiver * * *" Now in order to do that, is it your position that the board shall do that only if it is persons not of good character

1144 and responsibility, if no necessity further exists for an institution of this type in the community, or if the reasonable probability of its usefulness and success has disappeared in the community, or if there is undue injury to any other institution by continuing this? That would be the converse of what you stated.

Mr. WALKER. No. May I disagree?

Judge HALL. Explain it to me.

Mr. WALKER. I will.

Section (e) provides for the issuance of a charter.

Judge HALL. Yes.

Mr. WALKER. The appointment of a conservator does not cancel the charter.

Judge HALL. I quite understand that. But you were just saying that these were guides set forth by Congress in the act which was to guide the board in making rules and regulations.

Mr. WALKER. Well, they are guides in a sense.

Judge HALL. But now the rule and regulation here which they are complaining about, or the act and conduct derives from this section which authorizes them to merge, liquidate and conserve by the appointment of somebody. Is this a guide for that conduct?

Mr. WALKER. Your Honor, I was just speaking generally.

Judge HALL. All right.

Mr. WALKER. As to the guides and standards set up for different functions of the regulations, Section (e) provides for the chartering and I referred to the converse, that they would not do the reverse of Section (e) in issuing charters. 1145

Judge HALL. Well, we are particularly interested in what guides there are for rules and regulations which permit mergers and the appointment of a conservator, and so forth.

Mr. WALKER. I think there we have to go back to Section 5(a), "* * * to issue charges therefor, giving primary consideration to the best practises of local mutual thrift and home-financing institutions in the United States."

Judge HALL. That is the sole guide then?

Mr. WALKER. That is the sole one that occurs to me at the moment.

Judge HALL. That is the sole guide for all the powers conferred by Section 5(d)?

Mr. WALKER. Yes, I think it is.

Judge HALL. Very well.

Mr. WALKER. If we limit those standards and guides to the one point.

Judge HALL. Then the question is whether or not that is a sufficient standard and guide to meet the tests set out in the Schecter case, the Panama case and the other cases concerning Government seizure of property.

Mr. WALKER. Yes. And there is a state case which is at least close, the case of Veix v. Seneca Building and Loan Association of Newark. 1146

Judge HALL. Is that in your memorandum?

Mr. WALKER. No, it is not, your Honor.

I am corrected. It is apparently in our memorandum. It is also in counsel's memorandum.

Judge HALL. What is the citation again?

Mr. WALKER. Veix v. Seneca Building and Loan Association of Newark, 19 Atlantic (2d) page 219.

May I confer with counsel for a moment?

Judge HALL. I want to go back a minute to your standard that you mentioned.

The statute would then read, interpolating the standard, that the board shall have full power to provide in rules and regulations for including the power to appoint a conservator or receiver to take charge of the affairs of such association if, in the opinion of the board, the best practices of local mutual thrift and home-financing institutions in the United States require it?

Mr. WALKER. I think that is a correct statement.

Judge HALL. All right.

Mr. WALKER. I refer to the Veix case, and I hope I am pronouncing that name right, only because of the very——

Judge ORR. Pardon me. I do not want to interrupt you too much, but I just do not understand your statement there. You say that that lays down a standard
1147 under which the conservator can be appointed. Is that the only one that we must look to?

Mr. WALKER. Apparently that is the only standard which would apply to the particular paragraph permitting the appointment of a conservator. The other standards and guides deal with other phases of the regulations.

Judge ORR. Do you urge here that the best practices of this locality is for some commissioner to appoint a conservator to go in and take charge of an institution, oust its board of directors without any notice or any hearing, or any chance to appeal to the courts, when it is solvent?

Mr. WALKER. My understanding is that that is the local rule.

Judge ORR. You think that is the local rule?

Mr. WALKER. That is my understanding of it.

Judge ORR. I am surprised.

Mr. WALKER. The conservator may be appointed. There is a judicial review permitted from that order of appointment. But no prior notice, due process can follow the act as well as precede it.

Judge ORR. I understand that, but there must be following an order to permit due process, and there there isn't either under the position which you have taken.

Mr. WALKER. Yes, your Honor. It is my position that the administrative hearing provides due process.
1148 That was given on notice. All interested parties may appear and show cause why the conservator should not be removed.

Judge ORR. However, it stops there. There is no provision for any recourse to the courts or any other tribunal.

Mr. WALKER. No express provisions except it is inherent in the act itself, that if the act of the hearing officer or his higher-ups be arbitrary, capricious, or unlawful of course they may be removed. But where the discretionary power is delegated by Congress to an administrator and his discretion is involved, then I believe the general rule is that the Court will not substitute its judgment for the judgment exercised by the administrator.

Judge ORR. I think that is the general rule on all of these commissions, of acting within their constitutional authority and they are given a certain discretion, and if they act within that discretion of course they will not be disturbed. Is that the idea?

Mr. WALKER. That is the idea.

Judge ORR. I think that is right.

Mr. WALKER. Now if I may refer here just for a moment to this Veix case, it is interesting in that the standard here is so very narrow. On page 223 and the top of page 224, referring to the appointment of a conservator, it states:

"But the order when so made by the commissioner must in accordance with the express intention of
1149 statute be made 'for the purpose of conserving the assets of the building and loan associations of the state.'"

That was an emergency statute in New Jersey and that was the only standard that was set up, and that by the state court was held to be sufficient.

Judge HALL. Is there a similar standard here in this act?

Mr. WALKER. You are referring now to the state act?

Judge HALL. I am referring to the act here under consideration in this case. Is there anything in this act which says that they shall appoint a conservator to conserve the assets in the interests of the stockholders?

Mr. Walker. We will have to look at Section 5(d) again. I cannot stretch it any further than it goes.

Judge Hall. I see.

Mr. Walker. The board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association.

Now what would that conservator be appointed for? It would not be for the liquidation. Actually under the regulations the conservator has no power to merge.

1150 I believe there is something that he may recommend or suggest a merger. He has no power to consolidate, but the only thing which a conservator could do under 5(d) would be to conserve the assets of the corporation. It is implied in the name itself. He does that pending some reorganization, consolidation, merger, etc.

Judge Hall. Why? Is it because the wind is blowing today from the north or because the company is not solvent or because there is a run on the bank or because they have made some bad loans? What is the reason?

Mr. Walker. I will have to go outside the statute for what I want to say, if I may be permitted to digress here.

I have already stated that this corporation is solvent. Now a corporation may be as solvent as the Bank of England, if it still is solvent—and it should be after this British loan—a corporation might be entirely solvent and yet its officers and directors might be acting in an unlawful or unauthorized manner. I don't make any specific charges here whatever, I don't intend to, but suppose that the Bank of America, a tremendously large institution, that some officer might be taking $10,000 a day out of there and it wouldn't render it insolvent: That surely is not a requisite of the appointment of a conservator.

Judge Hall. Would you maintain that a comptroller of the currency would be justified in appointing a

1151 receiver or conservator for the Bank of America if some officer was taking $10,000 a day out of there?

Mr. Walker. Conceivably a situation might exist, if it was the right officer.

Judge HALL. Would it make a difference which officer it was?

Mr. WALKER. I think it would.

Judge HALL. Or who it was?

Mr. WALKER. If it was a teller; it certainly wouldn't affect the entire policy of the organization, but if it were the president, who might be in the position to cover up those unlawful withdrawals, and who had authority over everyone else in the bank, it certainly would make a difference. It would to me if I were in that position.

Now bear in mind again——

Judge HALL. Of course you do concede that it is a rather sharp movement, to say the least, to oust the management of any financial institution and put someone in, oust them completely.

Mr. WALKER. I grant you that it is a sharp move, and when the order of appointment was made it was made because of facts developed in a regular and annual examination conducted two days before. They didn't want to appoint a conservator because they knew that this cry of reprisal would be raised, as it has been,
1152 and yet these officials believed, felt and discussed that they would be derelict in their duty if they did not. But I am going outside of the record. I don't want to.

Judge HALL. Part of that is in the record.

Mr. WALKER. The reprisal is, at any rate
1153 What action might justify the appointment of a conservator? I think we can first say that insolvency is not a necessary requisite. Now I will get to another point.

We must bear in mind that under the regulations there is a close supervisory function in the administration over these institutions, just as there is over national banks. That is the relationship of these associations to the Federal Home Loan Bank is very closely analogous to the relationship between the national banks and the Federal Reserve Bank, and we have bank examiners and we have examiners who conduct regular inquiries over the affairs of these associations. They have not only a close supervisory function, but they have a very definite public duty to protect the shareholders in these mutual institutions.

Now insolvency is not a prerequisite, and I don't know if I can say exactly what is except that if in the opinion of the responsible officials certain acts are brought to light which necessitate immediate and summary action, they would be very derelict in their duty if they did not perform such action.

Judge HALL. Those acts would have to have some reasonable relationship to the safety of the institution, wouldn't they?

Mr. WALKER. Yes, and that would be determined on whether or not—I mean, that would contribute to whether their acts were arbitrary or capricious or based upon a reasonable conclusion drawn from the facts available. We are inevitably, I presume, led in this argument into
1154 the question of due process, that due process can follow the act of appointment as well as precede it, and I have numerous authorities in my memorandum here supporting that general position.

Judge ORR. I think that is very pertinent. Your statement there is very pertinent. That is the thing we have to look to. The due process might follow as well as precede. I think your observation there is pertinent.

Mr. WALKER. If we accept that for the purpose of argument, then as a premise that due process may follow, it is our position that entire due process is permitted under the regulations in this administrative hearing. I am compelled to stray further and further away from the point here, but I think it is pertinent too, your Honor. Two or three parties now are attempting to restrain that administrative hearing. The association itself requested it and now they seek to restrain it, but they refuse to withdraw their request for such an administrative hearing. It is a rather equivocal position.

Nevertheless, due process is preserved by that administrative hearing. Whether we agree with the principle of administrative hearings of this type or not, they have been recognized. True, there is a new administrative hearing rule which becomes effective in a couple of months which will change it. Nevertheless it doesn't stop proceeding at this time under the regulations now affected. Notice is given, all parties interested may appear.
1155 What is the effect of it? Either the deposed officers and directors show that there is nothing to

the charges made, that the facts were erroneous, and if they do that they return to office. If, on the other hand, the charges made against them are sustained, the association isn't merged, it isn't consolidated. Those assets aren't taken out on this route to San Francisco, to Maryland, to Washington. They simply elect a new board of directors and that is all that happens.

Since I am going into this question of an administrative hearing——

Judge ORR. Before you get away from that point, if I may ask you this question. I think it is the contention of opposing counsel that whether due process precede or follow, the previsions for the due process must be found within the statute.

Mr. WALKER. And not in the regulations?

Judge ORR. And not in the regulations. Unless the statute itself makes provision for the due process, then it is unconstitutional.

We will take a recess for about 10 minutes.

(Short recess.)

Judge HALE. Thank you for these copies of the act, counsel.

Mr. WALKER. Yes.

The question was asked whether the existence
1156 of due process appeared in the face of the act, that is, regarding administrative hearings and notices. I do not believe that it does, but very definitely do those provisions and entire due process is provided by the regulations promulgated pursuant to the act.

Now there are many cases holding that those regulations, duly promulgated, have the force and effect of law. I have no specific authority to the effect that the face of due process appearing in the regulation supplants or provides or may be missing from the act, but it is my position that it does, that the regulations have the full effect of the law itself and do provide due process.

Now I would like to back up on one statement which I made, and that is that the best practises of local mutual thrift, and so forth, home-financing institutions of the United States is the only guide toward the appointment of a conservator. I think the act necessarily must be construed as a whole, and I think the limitations and the

guides put upon various other acts, the granting of the charter, the purposes for which the associations are formed, all of those provide standards which must be considered by the administrator in appointing a conservator.

Take, for instance, Section (e), where it states that no charter shall be granted except to persons of good character and responsibility. Now suppose that Al
1157 Capone became a principal stockholder or shareholder in this institution and became one of the officers and directors. Certainly some action would be indicated on the part of the administrator. Suppose the directors were making loans far in excess of the statutory limitations. The administrator is not compelled to sit back until the shareholders' investment there is milked. Summary action often is necessary.

In this I think we should bear in mind that these institutions are composed of thousands of small shareholders. It is a thrift institution. It is a small savings institution. The government, through the third companion act covering the insurance accounts, insures their investment up to $5,000. Therefore the administrator not only has a definite fiduciary duty toward the shareholders but he has a very strong public duty to protect the insurance feature.

Judge HALL. In that act, however, counsel, it provides for the appointment of a conservator, doesn't it, on page 42, Section 406?

Mr. WALKER. I believe it does.

Judge HALL. In the event that a federal savings and loan association—that is what this Long Beach Federal Savings and Loan Association was, isn't that right?

Mr. WALKER. Yes

Judge HALL. Is in default, there is a standard—the corporation shall be appointed as conservator or
1158 receiver and is authorized to do such and such.

Mr. WALKER. May I ask what paragraph the court is reading from?

Judge HALL. That is page 42 of the pamphlet which you handed us, Section 406 (b) of the insurance of Savings and Loan Accounts Act.

Do you have the page?

Mr. WALKER. Yes, I have it.

Judge HALL. Is your paging the same as mine?

Mr. WALKER. The paging is the same in the pamphlet; yes.

Judge HALL. So that is taken care of outside of the Home Owners Loan Act and outside of this section obviously under which action was taken here because the corporation was not appointed conservator.

Mr. WALKER. Very true, but if read the heading immediately above Section 406 it covers only liquidation. Now this institution is not in the process of liquidation. There is no reason here to appoint the insurance corporation as conservator.

That is the only answer I can give you on that. It is not yet in the stage where that provision must be applied. Nevertheless the duty of protecting the institution from getting in that shape does exist in the administrator.

1159 Judge HALL. Subdivision (c) further provides, in the event any insured institution, other than a Federal Savings and Loan Association, is in default, the corporation shall have authority to act as conservator, receiver, or other legal custodian of such insured institution, and the services of the corporation are hereby tendered to the court. And obviously they intended that a court should appoint in a liquidation proceeding.

Mr. WALKER. Certainly, there can be liquidation proceedings through court process. Does the court care to direct my remarks to any particular phase of this? I am about running out of ammunition.

Judge HALL. You have filed a motion to dismiss on the ground of lack of jurisdiction?

Mr. WALKER. Yes.

Judge HALL. And on the ground that Fahey was a necessary party?

Mr. WALKER. An indispensable party.

Judge HALL. An indispensable party, rather. You have been addressing your remarks to your motion to dismiss, have you?

Mr. WALKER. I hope so, your Honor. I am trying to review what has occurred here. First, we were asked to address them to the jurisdiction of the court to sit; then it went to constitutional phases. I shall be

1160 glad to consider my remarks as addressed to the motion to dismiss.

Judge ORR. It all comes back to the proposition of the constitutionality of that statute. Is that the way you understand it? Here we are just concerned with the constitutionality of that statute at this time.

Mr. WALKER. That is correct, your Honor.

Judge HALL. In your motion to dismiss on the ground that Fahey is an indispensable party, and could not be joined in this district in this action, you assert the right to present that motion regardless of whether we are only considering the constitutionality of the statute, or in view of the announcement by the presiding judge that we are limiting the consideration to the constitutionality of the statute, you are abandoning your motion on the ground that he is an indispensable party?

Mr. WALKER. I would like to do neither, your Honor. I would like to defer the argument on it, reserving my point until the court has ruled on the constitutional provision.

Judge HALL. If Fahey is an indispensable party to this suit, doesn't that go to our jurisdiction?

Mr. WALKER. Not so far as the constituti-nal question goes, under the authority of the Nehr decision. I want to preserve my position.

Judge HALL. I understand. In other words, you do not press your motion to dismiss on the ground of an indispensable party, in opposition——

1161 Mr. WALKER. To the constitutional question.

In closing I can only say that several times in the history of this country we have had deplorable instances of the failure of the old thrift institutions. I think that is where the term "thrift" came into this statute, from the guarantee savings and loan associations. We have had some notable examples of that in this State. I think that is the reason why congress put into the act phrasing referring to the best practises within the several states, to avoid that previous situation which had arisen several times.

We look to that history to see the complete need of a close supervisory function maintained over those associations. That is the real issue here: Is the control going to continue, or are the gates going to be opened and the directors and officers of the association permitted to

operate without supervision and control, or run wild as they have done before?

Unless the court has further questions, I will rest.

Judge ORR. That is all, Mr. Walker. Do you gentlemen want to answer?

Mr. WALKER. If the court please, I don't think I discussed the question of estoppel. My points on that are all set out in the memorandum. I will submit it on the memorandum, if that is agreeable to the court.

Judge ORR. You will have the opportunity to do that, if you desire, now.

1162 Mr. WALKER. The discussion is found on page 10 of our same memorandum in opposition to the temporary injunction. The affidavit, I believe of J. Francis Moore, shows that the char[redacted] I believe there was charter E, and later charter K issued to this association. That affidavit sets out rules and regulations which were in effect at the time the association had done business, for some 13 or 14 years, and it has accepted all of the benefits of the act, including the use of the word "Federal" in its advertising; its insurance provisions; in the selecting of shareholders' investments; and has submitted, during a part of that time to the limitation put on its activities.

It is the position of the government now that they are estopped from denying the constitutionality of the act. There is considerable authority to support that position. I have cited it, beginning on page 10 of the memorandum, and I believe there is no necessity in prolonging the argument, or amplifying it, unless the court has some questions which they wish to direct.

Judge HALL. No, there seems to be some authorities not entirely consistent with each other cited in the various briefs. You maintain that the question of estoppel applies alike to the plaintiffs here and the shareholders?

Mr. WALKER. Their action is only derivative, your Honor. There are authorities set out in my mem-
1163 orandum to that effect.

Mr. WESTOVER. If your Honors please, before proceeding to answer counsel's argument directly, I would like to make one or two little corrections that I believe should be brought out to your Honors.

First of all, in the affidavit that counsel speaks of, by Mr. Moore, he sets forth the rules and regulations on page 3 of the affidavit, which rules and regulations were, of course, not the rules and regulations of that particular subject matter at the time of the seizure. These were rules and regulations that had been abrogated and changed by the commissioner after his appointment as a one-man board.

Since that came to my attention, I have only had an opportunity to get a certified copy of the actual rules and regulations in existence. I am speaking now of the subject of the hearings at the time of the seizure. I have this photographic copy, and would appreciate it if your Honors indulged me in reading them to you; the particular point I am making is that under the older rules and regulations notice had to be given, under the commissioner's own rules and regulations, to shareholders, borrowers, and creditors of the association, sent by mail to their last address, as shown on the books of the corporation. Under the present Fahey-adopted rules and regulations on that particular point, which were adopted August 15, 1943, reading from Title VI of the Federal
1164 Register, Section 206.2:

"Hearing on Appointment. Within fourteen days (Sundays and holidays included) after the appointment of a conservator or receiver for a Federal association not at the time of such appointment in the hands of a conservator, such Federal association, which has not, by its board of directors, consented to or requested the appointment of a conservator or receiver, may file an answer and serve a written demand for a hearing, authorized by its board of directors, which demand shall state the address to which notice of hearing shall be sent. Upon receipt of such answer and written demand for a hearing the Federal Home Loan Bank Administration shall issue and serve a notice of hearing upon the institution by mailing a copy of the order of hearing to the address stated in the demand therefor and shall conduct a hearing, at which time and place the Federal association may appear and show cause why the conservator or receiver should not have been appointed and why an order should be entered by the Federal Home Loan Bank Administration discharging the conservator or receiver."

The regulations go on from there, but that is all that deals with notice. I call your attention particularly to the fact that no notice is to be mailed to any of the
1165 shareholder members, stockholders or creditors of the association. I simply point that out because of statements which have been made that these regulations had been made. We want to back up our statement. I will be happy to file the photographic copy, or if your Honors care to look at it it is in the Federal Register.

Addressing ourselves primarily, in rebuttal, first to some of the points that counsel has made, I will try to review them briefly; then I would like the privilege of reading to your Honors one or two of the acts of which your Honors asked us for yesterday, in reference to what criteria had been set forth in the act and found to be sufficient, and what had been set forth in an act and found to be insufficient.

First, addressing myself to counsel's arguments that guides, which, of course, I agree with him, must be found specifically in the section itself, we submit, if your Honors please that the statement in Section 5a of 1464, as to the best local practise, constitutes a sufficient and adequate guide, and is really the only guide in reference to conservators, mergers, and so forth, which has been pointed out.

The guides as to the lending of funds I submit have nothing to do, and are not applicable to the appointment of a conservator, or mergers. The guides suggested as to investments in bonds, under Subdivision (c), Section 1464,
obviously are not applicable as a measure of when a
1166 conservator shall be appointed. The same applies to the suggestion made by counsel as to charters being granted only to good people.

We wonder if the commissioner is to review the list of shareholder members and determine whether they are the proper kind of people, or are not, and if in his opinion he decides they are not the proper kind of people, put in a conservator. I would submit that were Al Capone to become a depositor, I would say there was justification in the appointment of the conservator.

Judge HALL. The association has not been bidding for his business, however?

Mr. WESTOVER. We have not sent a notice inviting it, unless he is in under an assumed name. The Home Owners Loan Act of 1933, that is 5 (d), which we are particularly here considering, nor any other part of this act, provides for any jurisdictional review; neither do the rules and regulations of the commissioner, so far as I have been able to ascertain provide for any jurisdictional review other than the review suggested by counsel. I am sure he intended to imply that was purely the administrative review there contemplated. I say we only mention this to show what powers this commissioner claimed to have by virtue of this act, of which there is no criterion or limitation, but his powers are sufficiently set forth in his own rules and regulations, which claim to be sufficient to oust officers of an association of any and all
1167 authority, and prevent them thereby to have or to bring a legal action to any court of the land.

The only right remaining I think as set forth in his own rules and regulations, he has authority to petition himself for a hearing, which he may or may not grant, as he sees fit, it being discretionary, under his own rules and regulations to try and determine whether he acted properly or improperly. I might say there is nothing in the act, as your Honors will see by reading it, which in any way limits the action of Commissioner Fahey in the appointment of a conservator to emergency situations. I think that might be well to keep in mind in our analysis, that where you are dealing with what is sometimes slangily called hot property, in other words, dope, and things of that nature, where there has to be immediate federal action tending to prevent escape, or injury, or something of that nature, or insolvency in a federal institution,—there is an emergency that justifies the disregarding of the normal due process situation, under the police powers. But that is not such a situation here.

Here we have a solvent institution; the same men who have been back of it for 15 years, or thereabouts, making it grow from a small institution to a very large institution. There was no emergency; there was no escape situation; there was no insolvency.

There is nothing in this act that differentiates, or
1168 puts up any standards or differentiation for the commissioner, between acting in the appointment

of a conservator, or where there is an emergency, such as insolvency, or where there isn't an emergency.

Of course, your Honors hardly need to have it even mentioned to you that in a motion to dismiss, such as is here in contemplation, or in motions on constitutionality, that all of the allegations of the complaint are presumed to be true. It is not a factual hearing whatsoever.

I think your Honors have already sufficiently, by your questions, indicated that we are all agreed that the rules and regulations under which the commissioner was appointed receive their only authority by virtue of the act, the constitutionality of which we are here attacking. And if the act itself falls, that is, the section of the act under attack falls, the regulation and the appointment of the conservator also fall.

It should be pointed out to your Honors that the statute itself, the act of congress, subdivision (d) particularly, and any other part thereof, does not set up any procedure for the appointment of a conservator, nor does it set up any indication of what kind of procedure should be set up for the appointment of a conservator, or for a merger, consolidation, or any of the other things there under consideration.

Counsel mentioned in his argument, and has mentioned it in his brief, the case of Jameson & Co. v. Morgen-
1169 thau, 307 U. S., 171, which I believe your Honors already took note of. I would like to simply point out that in that case there was no question raised whatsoever as to the constitutionality of the Alcoholic Administration Act, which is the act there under consideration. So I do not believe the case is of any value to us in this matter.

1170 Mention was made by counsel that the shareholders, all they needed to do was elect a new board of directors. I would like to point out to your Honor that no such opportunity is afforded. The act sets up no such procedure, makes no such opportunity; neither do the rules and regulations set up any opportunity for these shareholders, the mutual joint owners of this institution, to select any new board of directors at all. That might be an answer, but it isn't so provided.

Now directing my attention specifically to the unconstitutional delegatio. of authority and powers, the Morgan

case which I mentioned before, and which your Honor asked me about, I was unfortunately unable to tell at the moment the act that it particularly dealt with. That was the Packers and Stockyards Act of 1921, and the particular question there involved was, I will grant your Honors, on the validity of a regulation issued under it, and the holding of a hearing under rules and regulations issued pursuant to the provisions of that act.

The situation was that the Secretary of Agriculture had made his ruling after a hearing, so-called, which was required by the provisions of the act. The case went up on appeal and was reversed on the ground that the hearing afforded was not a full and adequate hearing and had not constituted due process.

The particular section of the constitutional act
1171 there involved, that is, of the Packers and Stockyards Act, provided, Section 310 (reading from the act):

"Whenever after full hearing upon a complaint made as provided in Section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiation, either in the extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation or practice of a stockyard owner or market agency for or in connection with the furnishing of stockyard services is or will be unjust, unreasonable or discriminatory, the Secretary * * *"

Then it goes on and says what he may do after such a hearing.

The reason I take your Honors' time to cite it to you is simply that it is an example of what a proper act should have in it as to a full and fair hearing to be held before taking action.

The language of the court might be interesting to your Honors at one point because it does set up specifically some of the requirements. Reading from page 14 of the decision:

"The first question goes to the very foundation of the
action of administrative agencies entrusted by the
1172 Congress with broad control over activity which in their detail cannot be dealt with directly by the

legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand a fair and open hearing essential alike to the legality and validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an inexorable safeguard. (And citing a long list of cases.)"

The order, I might say, there made was held to have been improperly made and the case was reversed.

Now the one act which might be of interest to your Honors which has been held to be constitutional—I would like to read just a few of the provisions therein contained which indicated the basis upon which it was held constitutional—is the National Bituminous Coal Commission Act of 1937.

1173 Judge ORR. You have all of these in your memorandum, do you?

Mr. WESTOVER. Not the language of the particular law, your Honor.

Judge ORR. You have all those different cases cited?

Mr. WESTOVER. Yes, I have the [redacted]s or, if you would like, I can give you the situation. I thought you might like to hear the language. You asked yesterday——

Judge ORR. We will read them all anyway.

Mr. WESTOVER. You asked yesterday for examples of what should go in a proper congressional act.

Judge ORR. I understand what you are doing now, but I was just wondering if we have to make a note of those cases or whether the cases have been cited.

Mr. WESTOVER. This particular case I do not believe has been cited, your Honors, and I would like to also, if I might, and if your Honors care to, leave with you the particular volume of the United States Statutes at Large in which this particular act is found.

Judge HALL. Is that a long section that you are going to read?

Mr. WESTOVER. It is a long act but the section that I had in mind was rather short.

Judge HALL. Read it, that portion of it.

What is the case, incidentally?

1174 Mr. WESTOVER. The case is Sunshine Anthracite Coal Company v. Atkins, decided in 1940, 310 U. S. 381, which upholds the National Bituminous Coal Commission Act of 1937, which was passed by the Seventy-fifth Congress and is found in Volume 50, United States Statutes at Large, Part 1, page 72.

Judge HALL. The section you are reading from is page what?

Mr. WESTOVER. I intend to read, if I might, first the declaration of policy and necessity in the opening introduction of the act.

Judge ORR. What is the page citation of the other case?

Mr. WESTOVER. 310 U. S. 381.

Judge ORR. And the other one is?

Mr. WESTOVER. United States Statutes at Large, page 72, the statement of policy as to the act, and then I would like to read from other portions of it. I will give you those as I go along, if I might, your Honors.

"That regulation of the sale and distribution in interstate commerce of bituminous coal is imperative for the protection of such commerce; that there exist practices and methods of distribution and marketing of such coal that waste the coal resources of the Nation and disorganize, burden, and obstruct interstate commerce

1175 in ~~bituminous coal~~, with the result that regulation of the prices thereof and of unfair methods of competition therein is necessary to promote interstate commerce in bituminous coal and to remove burdens and obstructions therefrom."

Then Section 2 (a):

"There is hereby established in the Department of the Interior a National Bituminous Coal Commission (herein referred to as Commission), which shall be composed of seven members appointed by the President, by and with

the advice and consent of the Senate, for a term of four years * * *"

Then skipping to the bottom of page 73:

"Such Commission shall have the power to make and promulgate all reasonable rules and regulations for carrying out the provisions of this Act and shall annually make full report of its activities to the Secretary of the Interior for transmission to Congress. A majority of the Commission shall constitute a quorum for the transaction of business, and a vacancy in the Commission shall not impair the right of the remaining members to exercise all the power of the Commission. No order which is subject to judicial review under section 6, and no rule or regulation which has the force and effect of law, 1176 shall be made or prescribed by the Commission, unless it has given reasonable public notice of a hearing, and unless it has afforded to interested parties an opportunity to be heard, and unless it has made findings of fact. Such findings, if supported by substantial evidence shall be conclusive upon review thereof by any court of the United States * * *"

I might say, if I might interpolate again, that it should be kept in mind that that is as to the making of their own rules and regulations and the holding of hearings before the promulgation of such rules. But once adopted, if properly supported by evidence, then they are held to be good rules.

Now since Section 6 was mentioned, if I may read from Section 6 (a), page 85 of the act:

"All rules, regulations, determinations, and promulgations of any district board shall be subject to review by the Commission upon appeal by any producer and upon just cause shown shall be amenable to the order of the Commission; and appeal to the Commission shall be a matter of right in all cases to every producer and to all parties in interest, including any State or any political subdivision thereof."

Skipping to subdivision (b) of Section 6, having 1177 to do with the appeals to the court (still on page 85):

"Any person aggrieved by an order issued by the Commission in a proceeding to which such person is a party may obtain a review of such order in the Circuit Court

of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part * * *"

Judge ORR. We will take a recess until 2:00 o'clock.

Mr. WESTOVER. Very well, your Honor. Might I just, before we do so, cite your Honors to one more section in this same act, or two more sections in this same act, without reading them, because I see that evidently they are going to be too long.

One is Subdivision (c) of Section 6 on page 86 of the same act.

1178 (c) If any code member fails or neglects to obey any order of the Commission while the same is in effect, the Commission in its discretion may apply to the Circuit Court of Appeals of the United States within any circuit where such code member resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such code member and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as to facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for
1179 the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

The Commission may modify its findings as to the facts or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which if supported by substantial evidence shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347.

(d) The jurisdiction of the Circuit Court of Appeals of the United States or the United States Court of Appeals for the District of Columbia, as the case may be, to enforce, set aside, or modify orders of the Commission shall be exclusive.

Mr. WESTOVER. Also Section 8(a) of the same act, on page 86 and continuing over to the balance of that section on page 87, which deal with the enforcement of the commissioner's orders by applying to a court for an order to enforce their orders upon the people. In other words, they are not directly enforceable, they come to the courts and get authority to enforce their orders.

1180

SEC. 8. (a) The members of the Commission are authorized to administer oaths to witnesses appearing before the Commission and to authorize the taking of depositions in any proceedings; and, for the purpose of conducting its investigations, said Commission shall have full power to issue subpoenas and subpoenas duces tecum, which shall be as nearly as may be in the form of subpoenas issued by district courts of the United States. In case of contumacy by or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Upon the filing of the appli-

cation for such aid with the clerk of the court
1181 the court shall, either in term time or vacation, forthwith enter an order of record, requiring such person to appear before such court at a time stated in the order not more than ten days from the entry of the order (unless for good cause shown such time is extended), and show cause why he should not be required to obey such subpoena, and upon his failure to show cause it shall be the duty of the court to order such witness to appear before the said Commission and give such testimony or produce such evidence as may be lawfully required by said Commission. The district court, either in term time or vacation, shall have full power to punish for contempt as in other cases of refusal to obey the process and order of such court. Witnesses summoned before the Commission or when depositions are taken upon order of the Commission, shall be paid the same fees as are paid for like services in courts of the United States.

(b) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by
1182 the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Judge ORR. Do you think you will finish up this afternoon?

Mr. CHAPMAN. We will try to, your Honor.

Mr. WESTOVER. I don't think it would take too long, your Honor. I would like to read contrariwise from an

act which has been held to be unconstitutional on this same point.

Judge Orr. We will be in recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m.)

1183

Los Angeles, California,

Tuesday, July 16, 1946, 2:00 P. M.

Mr. Westover. If your Honors please, before proceeding with the reading of the statute that I said I would read from, that has been declared unconstitutional, I would like to cite your Honors and read very briefly from the Building and Loan Association Act of the State of California, reference to which was made this morning, directing our attention solely to the question of the appeal to the court and due process phase of that act. I might say that Section 13.11 of the Building and Loan Association Act of the State of California sets up the criteria under which the commissioner can appoint a conservator, and so forth, and notice, hearings, and things of that nature. Section 13.12, which I would like to read your Honors, provides:

"Whenever any association of whose property, business and assets the commissioner has taken possession, as aforesaid, deems itself aggrieved thereby, it may at any time within thirty days after such taking possession apply to the Superior Court of the county in which the principal office of such association is located, to enjoin further proceedings; and said court after citing the commissioner to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties and determining the facts, may upon the merits

1184 dismiss such application or enjoin the commissioner from further proceedings and direct him to surrender such business, property and assets of such association. An appeal from such judgment enjoining the commissioner from further proceedings and directing him to surrender such business, property and assets to such association shall not operate as a stay thereof, unless the trial court in its discretion shall so order."

Then it goes on setting forth further proceedings. Counsel this morning, in giving your Honors guides, pointed out guides which he felt were guides in the act here in ques-

tion, but he did not happen to mention to your Honors, or select any guides from Section (i) of the act. I am speaking now of the act here under consideration, because the case of Hopkins Savings Association v. Cleary, 296 U. S. 315, held that the Federal Home Owners Loan Act of 1933, Paragraph (i) thereof, which allowed state associations, by virtue of 51 percent of their shareholders to become automatically a federal association, without the consent of their state incorporation, was unconstitutional, and an encroachment under United States Constitutional Amendment No. 10,—the powers reserved to the states.

Judge HALL. That is Section (i)?

Mr. WESTOVER. Section (i) of the act herein under consideration.

1185 Judge HALL. That they are all numbered.

Mr. WESTOVER. Subdivision (i), I should say.

Judge HALL. Subdivision (i) of Section 5?

Mr. WESTOVER. Subdivision (i) of Section 5, or under the Federal Code it is Subdivision (i) of Section 1464, your Honor. In the pamphlet I take it it is 5. Counsel this morning mentioned estoppel, but did not choose to argue it. Hence, I will not argue it further ourselves, but I would like, your Honors, to cite you one further case, of Ashwander v. Tennessee Valley Authority, a 1935 decision, 297 U. S., 288, 56 Supreme Court, 466, 80 L. Ed., 688. The highlight of the case was that certiorari was taken to the Supreme Court to review the decree reversing the decision of the District Court, by which that court, in a suit of the preferred stockholders of the Alabama Power Company, set aside a contract that had been entered into by the company and the Tennessee Valley Authority, relating to the sale and exchange of electric power generated at the dam, and further things that were in the contract. On the point of estoppel, the court held, reading from page 322:

"The Government urges the Power Company is estopped to question the validity of the Act creating the Tennessee Valley Authority and hence that the stockholders, suing in the right of the corporation, cannot maintain this

1186 suit. It is said that the Power Company, in 1925, installed its own transformers and connections at Wilson Dam and has ever since purchased large quantities of electric energy there generated, and that the Power

Company continued its purchases after the passage of the Act of 1933 constituting the Authority. The principle is invoked"—the same there as here—"that one who accepts the benefit of a statute cannot be heard to question its constitutionality."

The court states:

"We think that the principle is not applicable here."

Reading from the bottom of page 323:

"We think that plaintiffs have made a sufficient showing to entitle them to bring suit and that a constitutional question is properly presented and should be decided."

And this morning, your Honors, we read from one of the acts that has been sustained. Now, I would like leave to read from the National Recovery Act just certain passages therefrom which have been held to be unconstitutional upon the ground that it was an improper attempt to delegate legislative authority. It is found in United States Statutes at Large, Volume 48, Part 1, commencing at page 195.

I will read first Section 1 if I may: Declaration of Policy:

"A national emergency productive of widespread
1187 unemployment and disorganization of industry,
which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practises, to promote the fullest possible utilization of the present productive capacities of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

Certainly, in that there is a far more specific statement

there than is found in the act under consideration as to the declaration of policy.

1188 Skipping through the act, I might say it was an emergency measure and by Subdivision (c) of Section 23 was to terminate at the expiration of two years, as your Honors are probably no doubt aware.

It sets up provisions as to the procedure which he is to follow in forming and approving codes of fair practices. That is in Section 3 (a).

Then it sets up under Section (d) of Section 3 the following as to notice and hearing:

"Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section."

Then the act sets up other statements as to the criteria to be followed, all of which were held to be inadequate by the cases holding the act unconstitutional.

1189 Since a case I would like to mention to your Honors which is already in our briefs deals specifically with Section 9, the oil regulation of the act, I would like to read Section 9 (c), the part involved in the Panama Refining Company v. Ryan case. Subdivision (c) of Section 9 reads:

"The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both."

I might say, your Honor, that I do not want to burden your Honors by reading further from such a lengthy act, but we submit that that is an act that had far more criteria, guides, and regulations and safeguards in it than does the present act, or the part thereof that we are here concerned with.

The National Recovery Act had one section thereof that was first held to be unconstitutional, very similarly
1190 to the way that one subsection of this act has already been held to be unconstitutional. The holding of unconstitutionality of Section 9 (c), which I have just read to your Honors, was in the Panama Refining Company v Ryan case, which has already been cited. The citation is 293 U. S. 388, 55 Supreme Court 241, 79 L. Ed. 1676, decided in 1934.

In that particular case the holding of the NRA, Section 9 (c), unconstitutional reversed the lower court's holding and remanded the case to the District Court to grant a permanent injunction restraining the infocement of the provisions of the NRA act.

The National Recovery Act, which I have just read from, as your Honors are all aware, of course was finally held unconstitutional by the A. L. A. Schechter Poultry Corporation v the United States, with which you are probably all familiar, commonly known as the "Blue Eagle" or the "Chicken" case I believe. There are a few passages in that decision, your Honors, which I would like the liberty to read because I believe they are particularly applicable to the point here involved.

"The declared purpose is 'To effect the policies of title I of the National Industrial Recovery Act.' The Code is established as 'a code of fair competition for the live poultry industry of the metropolitan area in and about the City of New York' • • •"
1191 I might add that Mr. Schechter, I believe, had been convicted pursuant to the provisions of that fair code act and took his appeal to the United States Supreme Court.

The court, in reversing that appeal, at page 529 states:

"We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national legislature cannot

deal directly. We pointed out in the Panama Company case that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained."

We submit, your Honors, that this, as in that case, is again an undermining of our constitutional principles.

1192 The Court went on, at page 537 (and I think this is particularly applicable because it speaks of the generalities in the way of the policies laid down in the act as being insufficient):

"* * * And, could an effort of that sort be made valid by such a preface of generalities as to permissible aims as we find in section 1 of title I? The answer is obvious. Such a delegation of legislative power is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress."

Omitting and skipping:

"* * * But Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry. See Panama Refining Co. v Ryan, supra, and cases there reviewed."

The Court finally held, after a very lengthy decision:

"On both the grounds we have discussed, the attempted delegation of legislative power, and the attempted regulation of intrastate transactions which affect interstate commerce only indirectly, we hold the code provisions here in question to be invalid and that the judgment of

1193 conviction must be reversed."

Mr. Justice Cardozo, as your Honors know, wrote

a concurring opinion of his own and his language, I believe, is very indicative of our situation here:

"'The delegated power of legislation which has found expression in this code is not canalized within banks that keep it from overflowing. It is unconfined and vagrant, if I may borrow my own words in an earlier opinion, Panama Refining Co. v Ryan, 293 U. S. 388, 440.

"This court has held that delegation may be unlawful though the act to be performed is definite and single, if the necessity, time and occasion of performance have been left in the end to the discretion of the delegate. Panama Refining Co. v Ryan, supra. I thought that ruling went too far. I pointed out in an opinion that there had been 'no grant to the Executive of any roving commission to inquire into evils and then, upon discovering them, do anything he pleases.' 293 U. S. at p. 435. Choice, though within limits, had been given him 'as to the occasion, but none whatever as to the means.' Ibid. Here, in the case before us, is an attempted delegation not confined to any single act nor to any class or group of acts identified
1194 or described by reference to a standard. Here in effect is a roving commission to inquire into evils and upon discovery correct them."

We submit, your Honors, that that is the same situation that we are here confronted with in the Home Owners Loan Act, particularly Subdivisions (a) and (d) thereof.

Judge Hall. You just stated, Mr. Westover, a moment ago that they sustained the contentions against that act on both grounds, the unlawful delegation of authority and a restraint upon intrastate commerce. You are not urging the commerce question here, are you?

Mr. Westover. No. I was reading from the decision, your Honor. In the Schechter case it was sustained on both grounds.

Judge Hall. Very well.

Mr. Wallace. May it please the Court, on behalf of the interpleader Title Service Company, to be as brief as possible, there are two or three matters brought up by Mr. Walker this morning which I would like to advert to for just a moment. One of which was that he stated that he could not say what is a prerequisite to the appointment of a conservator except as the same appears in the opinion

of the officials, which to my way of thinking is tantamount to an admission that the officials—although he used it in the plural, refers only to the single commissioner now administering the affairs of the Home Loan Bank—and leaves the entire matter within the sole discretion of
1195 Commissioner Fahey.

He also, I believe, stated that the due process does not appear in the regulations. It does appear in the regulations but not in the statute. And he referred to the type of notice which was given. In that respect, I would like for just a moment to refer to the affidavit of Mr. Moore.

Judge Orr. I just want to get straight on that. I do not understand the defendant admitting that the due process doesn't appear in the statute.

Mr. Wallace. Due notice I meant.

Judge Orr. I understood you to say due process.

Mr. Wallace. I wish to correct myself if I did.

In the affidavit of Mr. Moore, filed in support of one of the pleadings, and appearing on page 3, and I quote (this being a quotation from the regulations as they existed in 1934 at the date of the issuance of the charter):

"After ten days notice in writing to all shareholders, borrowers and creditors of the association sent by mail to the last address as shown on the books of the association, conduct a hearing at the office of the association or some other convenient place designated by him in such notice, at which hearing any interested parties may submit any evidence as to the condition of the association or its management."

Subsequently, as stated in that affidavit, the
1196 regulation was amended so that with the issuance of the second charter to the Long Beach Federal Savings and Loan Association the regulation as it then existed provided:

"Before the appointment of a conservator or receiver the federal association shall be given an opportunity to be heard provided, however, that the board may appoint a temporary conservator pending such hearing."

We now find the situation to exist on the current regulations that no hearing of any kind is necessary.

Judge Hall. What is the regulation under which he seized the association? Do you know what that provides?

Mr. WALLACE. I do not have a copy with me here, your Honor.

Mr. WALKER. My offhand recollection is that it is 204.1.

Judge HALL. Conservator or receiver.

Mr. WALLACE. Do you have a copy of it, Mr. Walker?

Mr. WALKER. No. It disappeared during the noon recess.

Judge HALL. I have found it.

Mr. WALLACE. As I stated earlier briefly yesterday, the only notice which was given was that which was published in the official documents back in Washington, some 3000 miles from the point where the take-over took place. In answer to that this morning, Mr. Wallace stated that in order to give actual notice it would have been neces-
1197 sary to have had access to the identity of all of the interested parties, shareholders, borrowers and creditors, and yet in their early regulations they did provide for that particular type of notice to be given after an inspection of those records as they appeared.

That is submitted merely as additional factors in support of the contention that there is no adequate notice provided in the act itself, which this Court now has before it for consideration, and as a very highly and material element of a lack of due process.

The Court has inquired with reference to the matter of estoppel, whether the Court may deem that that applies to the plaintiffs or the defendant Long Beach Federal Savings and Loan Association. It is respectfully submitted on behalf of the Title Service Company, the interpleader, that it can have no effect at all as to the interpleader.

In connection with that position, it is further submitted, under the authority of the case of Jones v. Railway Express, that once this Court has taken jurisdiction in the interpleader matter that it has no alternative other than to grant relief to all of the parties who are concerned.

The Jones case, decided by the Circuit Court of Appeals in 1939, is published in 106 Fed. (2d) at page 341.

It likewise was a class suit which was brought by a number of victims which had been defrauded in the
1198 old Sir Francis Drake estate matter. After the principal perpetrator of the fraud had been brought

to justice his arrest, an action was filed by the plaintiff Jones claiming to be a representative of the class of all persons who were defrauded.

Unfortunately for Mr. Jones, no one of the individuals had been defrauded of a sum as large as $500. The money at the time was in the process of transit in the form of currency and was in the hands of the Railway Express Agency.

The Railway Express Agency did not see fit, as the interpleader here has done, to deposit the funds in court or, as we have done, the documents, but in lieu thereof brought an action in the nature of interpleader.

A cross-demand was filed against the Railway Express Agency by the Collector of Internal Revenue for alleged deficiencies in income tax which far exceeded the amount of money which was held.

Therefore we have in this case virtually all of the elements which are in issue in this case at bar, to wit, a class action, cross-claims of Government official, and finally interpleader.

The Court stated, among other things, at page 343:

"While defendant's contention that a class suit may not be maintained where each claimant of the class asserts a separate claim based on individual and separate 1199 fraudulent representations, is sound, we are bound, at this stage of the proceedings, by the allegations of the complaint."

As Mr. Westover stated a little while ago, we all feel that for the purposes of this hearing the allegations of the pleadings must be taken as correct.

"It is possible, accepting the allegations of the complaint, that there exists a case of joint action upon identical fraud with the resulting total damage exceeding $3,000. It is only after proof has been received on this issue, or admissions made in open court by plaintiff, that the court may, in view of the pleadings, deny plaintiff's right to sue for all, that is, to maintain a class suit."

Omitting a portion of the decision and passing on to the next page, the Court further stated:

"All these essential facts were disclosed in the bill of the interpleader. In fact, they appear in the several pleadings of all the parties."

To wit, the mandatory requirements of citizenship, fund in the possession of a stakeholder, and the total amount in excess of $500.

"The Supreme Court stated in the recent case of Texas v. Florida, 306 U. S. 398, 59 S. Ct. 563, 567, 83, L. Ed. 817, 121 A. L. R. 1179, decided March 13, 1939:

1200 —" 'Before the Constitution was adopted a familiar basis for the exercise of the extraordinary powers of courts of equity was the avoidance of the risk of loss ensuing from the demands in separate suits of rival claimants to the same debt or legal duty. Alnete v. Bettam, Cary, 65 (1560); Hackett v. Webb and Wifley, Finch 257 (1676); see 9 Viner Abr., 419-440; 1 Spence, The Equitable Jurisdiction of the Court of Chancery, 659; Maclennan, Law of Interpleader, 5 et seq. Since, without the interposition of equity, each claimant in pursuing his remedy in an independent suit might succeed and thus subject the debtor or the fund pursued to multiple liability, equity gave a remedy by way of bill of interpleader, upon the prosecution of which it required the rival claimants to litigate in a single suit their ownership of the asserted claim. A plaintiff need not await actual institution of independent suits; it is enough if he shows that conflicting claims are asserted and that the consequent risk of loss is substantial.' "

Passing a little further along in the decision the Court terminated the decision by stating:

"By proceeding under the counterclaim of the Railway Express the jurisdiction of the court will

1201 be unassailable, and the claims of all claimants may be litigated exactly the same as in a proper class suit."

Predicated upon the authority of that case, it is the belief of Title Service Company and we respectfully submit it, that the Court, once having taken jurisdiction under the interpleader cross-claim, will not be required to recognize any possibility of estoppel as advanced either as against the plaintiffs or the defendant Long Beach Federal Savings and Loan Association, but it will be required that the respective claims to the funds, either those actually deposited in court by us or the approximately 8000 other deeds of trust approximating about 12 million dol-

lars, in the face of the interpleader must be litigated and the Court will necessarily accept that matter and the jurisdiction and adjudicate the whole thing.

I have nothing to add that has not already been cited by Mr. Westover on the constitutional basis of the matter other than that which I have already pointed out, that in so far as we have been able to discover, the act itself, as demonstrated by the retrogression in the due process and notice provided in their regulations, does not come within the constitutional provision and that the act itself suffers and must fall for that reason.

Mr. TREMAINE. The defendant and cross-claimant
1202 Robert H. Wallis is in almost identical position with Title Service Company. I see no occasion to repeat the argument of Mr. Wallace, as attorney for the other interpleading defendant here.

In this case, we are not involved with notes or trust deeds but a cashier's check in the sum of $50,000, and we submit that there is no charge of estoppel on the part of this cross-claimant and interpleader, and there would be no occasion for one if it were made, so that issue does not involve my particular client.

In arguing back on the question of constitutionality again, I keep reverting, I hope not painfully, to the idea that we are a Government of laws rather than of men, and to point out that to permit of an interpretation of an act of Congress in such a way that the administrative body, or in this case individual, public official, would have the power to appoint a conservator, seize assets, merge, and various other things that we have discussed here, would necessarily have to be interpreted, if valid, as being an action in relation to a power given and to effectuate some authority intended.

So if the Government's position that a conservator was properly appointed here is correct, it would be an appointment for a purpose which had no particular relation to the object sought. The conservator here took an
1203 admittedly solvent concern and almost immediately thereafter there was withdrawn some 8 million dollars in deposits. In addition to that he has promptly raised the cost of operation of the concern.

Mr. Gregory's affidavit is before the Court, in opposi-

tion to the motions to dismiss, and page 9 contains the statement that for the period from May 20, 1946 to June 30, 1946, a period of approximately 40 days, the said defendant A. V. Ammann did appropriate and set aside for salaries, expenses and costs for himself and his associates, the sum of approximately $17,000 over and above the expenses and salaries to regular employees of the Long Beach Federal Savings and Loan Association. I cannot see any conservation going on under any authority there.

Now it has also been suggested, I think by Mr. Walker—or probably I caught the idea from a remark of one of your Honors—that the existence of the association itself would be threatened by a decision holding the portion of the act unconstitutional which is here attached. I wish to submit that if Section 5(d) of the act should be declared unconstitutional that in no way would the operations of the association be affected. They could continue as they were before and carry on a business which has constantly grown from the time of its inception. And to permit the defendant Fahey to have the arbitrary authority to
1204 remove a management from its control of a private organization without any provision for independent judicial review or even, as we have set forth in various affidavits here, an unbiased administrative tribunal, is certainly not constitutional.

1205 The situation is so bad that it appears from the records, affidavits in particular, that the management did not know what the complaints were prior to the seizure. There was not only no hearing, but there was no information as to what might be objectionable.

When it was seized, there was no opportunity to ratify anything that might be complained of, and when an order was delivered showing that there was some authority for a seizure, certified to by Ray Daugherty, assistant secretary of the Federal Home Loan Bank, and which, by the way, is set up in the plaintiff's motion for a preliminary injunction to take testimony, as Exhibit C, all that the directors were given as a reason for the seizure having been accomplished was the statement of conclusions of law. They had no other reason given to them as to why they should be seized.

That, I submit, was so arbitrary and so beyond any

authority given in the act, that it shows on its own face to be unconstitutional.

That is all I care to submit, your Honors.

Mr. CHAPMAN. I am interested here in how this thing worked out. They talk about a conservator, but if he first walks in there, and loses $6,000,000, he was not conserving very much.

I am interested also in the attempts that have apparently been made to find somewhere in this act some
1206 standard as to when a conservator should be appointed, and for what purpose. I haven't heard yet anything from counsel, nor from your Honors, in any way showing any delegation of due process. In other words, we have a section which says he can take charge of the association. It does not say when; it does not say what he should do, before or after; it does not provide any limits on the absolute uncontrolled authority.

If this language is valid, he can take every association in the United States if he happens to want it, and he does not need any authority but his own desire to do so. So far he has seemed to only want to take two, but if that act is upheld, if your Honors decide this is constitutional, what limits will there be to what this man could do, if he happens to want it? There is nothing at all placed there by congress, and there is certainly nothing placed by his own regulations.

We attack the constitutionality of Section 5 (d) in this particular case on three things. First, there is no power given, even by implication, to create his own court. He can call it an administrative hearing, if he wants to, but throughout this act there is no delegation of judicial authority. There is no way for him, even from a single word in here, authorizing him to set up his own court, his own rules of practise, his own rules of evidence, his own rules of pleading, and deciding whether he shall
permit an answer or not. In the very order made
1207 an exhibit in this case, in which he talks about due process, he says the hearing officer can't decide this case; he can take some evidence; we will let him do it this time, but he can't decide the case. I am holding that power for myself.

But the congress never gave him that power. There

isn't a word in this act which gives him that power, and therefore I say there is a denial of due process in setting up his own court.

Next, on the question of merger, we cited the Federal Home Loan Bank merger in Los Angeles. Counsel seems to think that is very different; that our case has no application. It is the same man, and we feel that he has shown to us what he could have done, from what he did. I could go on and argue about malice and bias and prejudice, and why that was done. Your Honors say that does not bear on the constitutional question. I agree with you. I don't think he had the power to do what he has done, whatever his motives.

Next is the power to appoint a conservator. Your Honors I think have given that primary attention. While that is dangerous, and in this case a serious injury to the institution, even that is not as dangerous as the power to create his own court, and to deny access to the aggrieved parties to their own courts. That is what they tried to do here.

I don't think anyone has shown yet any limitations on this utterly untrampled authority they claim to have.

I think the congress tried to give it to him all right, 1208 but I don't think the congress could give it to him.

One other point: that is, if there was not Section 5 (a) there would not have been any association. There is another section of this act which has been held unconstitutional, which Mr. Westover cited here to your Honor. That was 10 years ago. It is still going. It does not seem to affect the act, or the industry, or harm it one mite. If this Section 5 (d) is held unconstitutional, as I am convinced it clearly is, it will benefit the entire federal savings and loan industry, and they won't be wondering every night when they go to bed whether they will have an association when they get up in the morning.

Mr. WALKER. The opposition has opened and closed, and supposedly I have a motion to dismiss, which might give me an opportunity to take about two minutes in a closing argument. May I be granted that time? I simply want to make a couple of comments. So far as the applications for the two restraining orders and the injunction are concerned, certain affidavits have been filed, particu-

larly on the question of estoppel; and an affidavit denying that these acts were done by way of reprisal.

But we are here, as I understand it, concerned entirely and solely with the constitutionality of this one act. As to that the court is bound to look to the four corners of the act. I don't think there are any facts before the court. It is solely a question of law.

1209 I want to make one very brief statement here, and I will submit my case on that. The right of immediate appointment of a conservator is inherent in the supervisory function of the financial institution affected by the public interest. All the guides and standards set out in the act go directly to the supervisory power of the Board.

Judge HALL. Let me hear that statement over again.

Mr. WALKER. All of the guides——

Judge HALL. No, the power to appoint a receiver is inherent——

Mr. WALKER. It is inherent in the supervisory function.

Judge HALL. Even if there may be no statutory grant of the power to appoint?

Mr. WALKER. If the supervisory function exists.

Judge HALL. If the supervisory function is granted, they need no further grant to appoint a receiver to take it over?

Mr. WALKER. I think it could be so argued, your Honor; that it is inherent in this power; that the guides and standards set out in the act go to the supervisory power of the Board. The legislature has created a broad circle within which the association may operate. It has impressed upon the commissioner the duty to so act, that the association does not operate without that circle; does not stray from that circle. Therefore, it is our contention that the power immediately to appoint a con-

1210 servator is merely an implementation of that duty impressed upon the commissioner by statute.

One other thing occurred to me, your Honors. It is would be of any service to the court I would be glad to submit a brief which would be only a consolidation of the points that have been set up in the memorandum of au-

thorities. I don't know whether the court wishes it or not, but I would be glad to do it if the court so desires.

Judge ORR. It will make easier the work of the court, if they will do that on both sides.

Mr. WALKER. I can have mine within two or three days. It will be just a consolidation of material.

Judge HALL. How about the other side; if we get a memorandum on the motion to enjoin a hearing; a memorandum on the motion in opposition to the motion to dismiss; a memorandum on the motion to enjoin and hold unconstitutional——

Mr. WESTOVER. Obviously, whatever your Honors wish we will endeavor to comply with it. We wonder if it will be helpful, because there are a number of different motions and apparently counsel's idea would be that we will pull all the different motions out, and put them in one point. Wouldn't that be more confusing?

Judge HALL. You have argued only one point; that is the constitutionality of this act.

Mr. WESTOVER. That is right. We have limited it to that.

Judge HALL. It seems to me it would be helpful if everyone who has participated in this matter would file a memorandum on that one point. At least, the judges would have to look to that memorandum rather than through the pleadings, and through all the orders, to find the different points referred to.

1211

Mr. WALKER. Would these briefs be filed simultaneously? It is going to delay it somewhat if we have an interchange of briefs.

Judge ORR. I think so. We will give five days to both sides. Upon the filing of points and authorities the matter will stand submitted.

1212 [Reporter's certificate to foregoing transcript omitted in printing.]

1213 In the United States District Court,
Southern District of California, Central Division
Civil No. 5421–PH
Honorable PEIRSON M. HALL, Judge Presiding

PAUL MALLONEE, C. H. NEWHOUSE, AND WINNIE BUCKLIN, ETC., PLAINTIFFS *v.* JOHN H. FAHEY, INDIVIDUALLY, JOHN H. FAHEY as CHAIRMAN OF THE FEDERAL HOME LOAN BANK BOARD, A. V. AMMANN, ETC., ET AL., DEFENDANTS

Reporter's transcript of proceedings
Filed Oct. 23, 1946

LOS ANGELES, CALIFORNIA,
September 13, 14, 1946.

1215 APPEARANCES

For the Plaintiffs: Westover & Smith, 215 West Sixth Street, Los Angeles 14, California; by Wyckoff Westover, Esq.

For the Defendant Title Service Company: Thomas & Wallace, 602 Jergins Trust Building, Long Beach, California; by Harry O. Wallace, Esq.

For the Defendant and Cross-Complainant R. H. Wallis: Raymond Tremaine, Esq., 210 West Seventh Street, Los Angeles 14, California.

For the Defendant A. V. Ammann, individually, and as Conservator: James M. Carter, United States Attorney, Los Angeles 12, California; and Mildred Kluckhohn and Moe Silverman, Esq.

1216 LOS ANGELES, CALIFORNIA,
September 13, 1946; 4:15 o'clock P. M.

* * * * *

The COURT. In this Long Beach matter, I see it is a quarter after 4:00.

Mr. LIVINGSTON. I will gladly defer, if the Court please.

Mr. CARTER. In the Long Beach matter, if the Court please, Mr. Walker, who is familiar with the case in our office, is away. I think he communicated with your Honor before he left. We have been served with——

The COURT. I am not considering settling the findings today.

MR. CARTER. I know, but there is an application, I understand, for a temporary order of some sort.

The COURT. Yes, there is.

MR. CARTER. And neither Miss Kluckhohn nor myself are familiar with the facts of this case.

We were served shortly before noon with these very voluminous papers. The papers themselves show that they were served on other counsel on September 11th, two days ago. Why they waited until noontime to serve our office, I don't know but they did.

The COURT. I do not think that they would be required to serve your office at all.

Mr. CARTER. That might be true, but having
1217 served us two days after they served other parties, it puts us in the position where service on us means practically nothing. They might as well have come down without serving us because none of us have had time to go through this matter.

My suggestion to your Honor would be that certainly no damage can ensue between now and the first part of the week, that the matter be put over and heard when Mr. Walker is present, who is familiar with the case. This is Friday afternoon now. It is pretty hard for me to imagine what damage might ensue to the litigants here if we put it over.

The COURT. The plaintiffs in the case claim the withdrawals are continuing at a crippling rate, that the conservator is investing funds, some as much as a million and more dollars in one day in particular types of bonds. Whether they are good bonds or whether they are good investments is not for the Court to say. But the plaintiffs here seem to feel as though it is a matter of urgency and should be acted upon by the Court so far as the temporary restraining order is concerned.

MR. CARTER. I merely make this one statement: If the matter is to be heard this afternoon I ask the Court's indulgence that Mr. Dougherty be allowed to be heard in the matter. I am not prepared to argue the matter. I know nothing of it except the general facts in the case, but I make

the suggestion that the matter go over until the first
1218 part of the week when it can be heard in some orderly manner and we have a chance to present what our views might be.

If, on the other hand, the Court wants to hear it this afternoon, all I can do is ask that Mr. Dougherty be allowed to address the Court.

The COURT. I asked the counsel to come back at 3:30 today, and it is now 4:20, and it looks as though we will be a little while on this other matter yet.

Mr. WESTOVER. Your Honor please, may I clear up just one point on the service?

The service on the Long Beach people was not a service but an approval of the judgment and its form. That was made at nearly midnight Wednesday night at Long Beach because of the urgency of this matter. Attempts to get a consent as to the form of the judgment were made yesterday morning upon the United States Attorney's office here, and the rush of that was done because we had been advised, several of us, that Mr. Walker would be here until Friday. We found for the first time yesterday morning that he had been called away a day ahead of time and that that consent as to the form of the judgment was not agreeable to the United States Attorney's office and we therefore of course proceeded with this motion as we advised your Honor yesterday and your Honor asked us to come in this morning and, then, upon your Honor's suggestion, we
1219 notified the United States Attorney's office this morning, although I think it is conceded they are, strictly speaking, not required to receive notice on this matter.

The COURT. I haven't had time to read all of your affidavits.

Mr. WALLACE. May I make a statement by way of supplementing what Mr. Westover has said?

I personally talked with Mr. Walker following the hearing here last Monday and he advised me of his hope and desire to be out of the city over the weekend, stating he wanted to be away from Friday to Tuesday, and also asked our indulgence by reason of the recent bereavement of Judge Dougherty. At that time I advised him, on behalf of the defendant Title Service Company, my client,

and on behalf of the Long Beeach Federal Savings and Loan Association, whose counsel is ill, that I was very certain that we could not accede to his request, much as we would like to do so, for two reasons: Primarily Judge Dougherty was not counsel, either of record or by association, and in view of the fact that Mr. Walker had told me at that time that the only reason that they had not associated Judge Dougherty prior to this time was that they had anticipated using him as a witness and did not want to be put to the embarrassment of having him in a dual capacity, and that now since there was an opinion rendered by the Court they saw fit to associate him as counsel. I do not see too much merit in Mr. Carter's request that he be allowed to join in what would ordinarily be an ex parte application.

1220 Mr. Westover. If your Honor please, I want to say this, that I have certainly no objection to Judge Dougherty being associated in this matter at this time, if Mr. Carter wishes, and I do want to express for the record sympathy with him in his bereavement, but the urgency of the matter—and I might say it is our information—that close to two million dollars in depreciation of assets has occurred since the matter was argued in spite of the expeditious manner in which this Court rendered its opinion, which we appreciate was done very promptly.

Mr. Carter. I merely make this further statement, that your Honor is familiar with my position with reference to counsel for other agencies appearing in these cases, and I make the request this afternoon merely because I am in a position where no one in the office except Judge Dougherty knows anything about this case. It is not a motion I would ordinarily make.

The Court. Very well. I think that perhaps time would be saved—I know that I will want to read all of the affidavits and I have simply not had time to do it—if you could come down tomorrow. I dislike to have you people from Long Beach running back and forth, but I simply cannot do two things at once.

Mr. Westover. Might I ask one stipulation in the record from counsel, if we may have it, that pend-
1221 ing the hearing of this temporary restraining order tomorrow, as I understand your Honor intends to

hear it, nothing will be removed from the premises in Long Beach until the determination of that temporary restraining order.

The COURT. I was under the impression at the hearing had that the Government was taking the position that nothing would be done concerning the assets, that the conservator would merely be a conservator and would not continue to invest money and the like. However, I have not checked the record to see if my impression is borne out by any statement made.

Mr. DOUGHERTY. Your Honor please, if I may make just one statement very briefly, I think it will probably be the duty of the conservator under this type of conservatorship to try to invest the funds so that it would not lie idly and not bear any interest for the Association. I think that has been done. I think also it would be his duty to attempt, as best he could under these trying circumstances, to keep the business of the Association going on so that whoever did take over the Association eventually would have the benefit of what good will could be built up. I think that is what has been done.

The COURT. I think if all counsel will return tomorrow morning at 11:00 o'clock I will then have time to read your affidavits and will hear from counsel on the matter of the application for the temporary restraining order.

Mr. WALLACE. That being the case, your Honor,
1222 I anticipate that I will probably be unable to be here. I have had an engagement of long standing over the weekend, and in case I cannot break it, and in order to facilitate matters, may I request that Mr. Tremaine make such presentations as may be necessary on behalf of my client?

The COURT. You may do as you like. If Mr. Tremaine is here and Mr. Westover is here you may make whatever arrangements you care to.

Mr. TREMAINE. I see no conflict as between my client and Mr. Wallace's. We are both interpleaders. I do not object, if that is satisfactory to the Court.

The COURT. Very well. 11:00 o'clock tomorrow morning.

Mr. WESTOVER. May we have the stipulation that there will be no removal of documents at least until tomorrow morning from the premises at Long Beach?

Mr. DOUGHERTY. There will be no removal.

Mr. WESTOVER. Thank you. I would like to have that of record.

Mr. CARTER. I do not anticipate being here tomorrow morning, your Honor. I doubt if I would be of any help to the Court. I know but very little about this case.

The COURT. Whoever wants to be here can be here. I will be here at 11:00 o'clock.

1223 In the District Court of the United States

[Title omitted.]

1224 *Reporter's transcript of hearing on motion*

LOS ANGELES, CALIFORNIA,
September 14, 1946.

APPEARANCES

For the Plaintiffs: Westover & Smith, 215 West Sixth Street, Los Angeles 14, California; by Wyckoff Westover, Esq.

For the Defendant Title Service Company: Thomas & Wallace, 602 Jergins Trust Building, Long Beach, California; by Harry O. Wallace, Esq.

For the Defendant A. V. Ammann, individually and as Conservator: James M. Carter, United States Attorney, Los Angeles 12, California; by Mildred Kluckhohn and Moe Silverman, Esq.

For the Defendant and Cross-Complainant R. H. Wallis: Raymond Tremaine, Esq., 210 West Seventh Street, Los Angeles 14, California.

ALSO PRESENT

Ray E. Dougherty, Associate General Counsel, Federal Home Loan Bank System.

Irving G. Bishop, Esq., 819 Chester Williams Building, Los Angeles, California.

Wilbur D. Garber, Esq.

Thomas A. Gregory, President, Long Beach Federal Savings and Loan Association.

Leon F. Frazer, Escrow Officer, Title Service Company.

1225 LOS ANGELES, CALIFORNIA,
September 14, 1946; 11:15 o'clock A. M.

(In chambers.)

The COURT. All right. Who wants to start off?

Mr. WESTOVER. Your Honor, do you want to take up the ex parte motion first?

The COURT. On the matter of the settlement of the findings of fact, conclusions of law and degree, I have already indicated that the defendants, and those who did not approve them as to form or otherwise, would be given sufficient time to lodge their objections after Mr. Walker returns, and I understand he will not return until next Tuesday. For that reason we will not discuss that matter today, which leaves the only thing here the matter of the motion for a temporary restraining order re interference with operation of Long Beach Federal Savings and Loan Association.

I have read the various affidavits that were filed. Has anybody anything to add?

Mr. WESTOVER. You mean in argument, your Honor?

The COURT. You have here in addition to the temporary restraining order a notice of motion.

Mr. WALLACE. That is the motion of the preliminary injunction predicated on the restraining order I believe sir.

The Court. Now on your restraining order here, as I read it, this would amount to an immediate and
1226 forthwith ouster of Ammann.

Mr. WESTOVER. An immediate and forthwith restoration of possession; yes, your Honor.

The COURT. Yes.

Mr. WESTOVER. Our theory on that, if your Honor please, is that the statutory court, composed of three judges, having already rendered its opinion, that this provision of the act, Section 5(d) being unconstitutional and that the only authority of Mr. Ammann and his associates, if any, being bottomed upon that unconstitutional act, that in effect he becomes an unauthorized person without any authority if the unconstitutionality of that provision of the act is correct, and we of course feel that most obviously it is correct. Therefore in simple language Mr. Ammann and his staff either are, in effect, trespassers

upon the property and the assets of the Long Beach Federal Savings and Loan Association, or the management and ownership, and the management of that association and all of its assets should immediately be forthwith restored to the duly elected and constituted officers of the association and not left to continue even temporarily in the hands of an unauthorized person. Any and all acts that are being done by Mr. Ammann or any of his staff are open, of course, to serious question. In our opinion they are void ab initio, and the making of loans, investments—as your Honor expressed it from the bench
1227 yesterday, whether good or bad investments—are subject to the question of whether they are valid at all and if he is an unauthorized person they certainly are not valid.

Now whether or not the officers ultimately would want to rescind his purported actions on all these various things would depend obviously upon subsequent facts. But in the event to let him continue to act unauthorizedly, we feel is highly detrimental to the association.

We feel that our affidavits indicate that the association is being seriously prejudiced. We think that is shown by the fact that there has been a decline in the assets of the association from roughly 8 million dollars to nearly 10 million dollars of loss since the matter was agreed on July 16th, a matter of a little less than two months.

The amount of the daily overhead of the conservator and his staff, in excess and above that of the employees of the association, the former employees of the association, amounts to something better than $400 a day which I suppose, in view of these millions that we are here considering, is only a drop in the bucket, but to most of us constitutes something of an item, and therefore we feel that the delay in obviously meeting the objections and the time which it will necessarily consume in settling the decree and findings of fact, conclusions of law increases particularly since there is going to be opposition from the United States Attorney's office as to the
1228 little time, and we certainly don't want to prejudice them in their right to take such time as they feel necessary and your Honor feels necessary to settle those findings and conclusions and that during that interim

period the association will suffer further irreparable damage.

In that connection, I think it is well to recall to all of our minds that this is essentially a financial institution. I guess we are all agreed and recognize the fact that there is probably nothing so shy as money, and the least question or uncertainty or indecision that reaches the public and the investors and shareholder members of necessity causes them to be fearful and results in the loss of that confidence which is one of the most valuable assets of such a financial institution.

I think that has been well demonstrated by this loss of —I like to use the word "deposits," although I don't believe it is proper in this savings and loan association—the loss of the shareholder members' investments amounting to over 10 million dollars demonstrates that fact I believe very clearly.

Another point that I believe should be recalled is that the titles to a great deal of real property are involved in this matter. Unfortunately many innocent parties who have come into escrow, attempted to pay off their loans, are finding that it is impossible to get a guaranteed, insured title through the title companies because of this
1229 situation where we have an unauthorized—I assume ... that can be assumed now in view of your Honor's decision—person handling the affairs of this association, making loans, asking for reconveyances, etc., that those titles are not marketable and they are not insurable and are being held up.

We have numerous instances, I am advised of one in particular that is a good example; of a lady who had sold her home for some $20,000 in escrow. The title could not be cleared and wasn't and the delay, and so forth, resulted in the loss of that sale. She resold the property for $15,000, at a loss of $5,000 to her, and the same results followed. I understand now that she has not resold it again at all. Of course maybe if property keeps on going up she will regain that, but that is something I don't believe should be continued, that condition of uncertainty.

We feel that it would be highly inconsistent for the Court, if I may express it that way, the three-judge statutory court, to render an opinion that a statute is uncon-

stitutional and that the purported conservator has no authority except such as is bottomed upon such unconstitutional statute, and at the same time let that trespasser, if I may use that expression without any vindictiveness at all, continue in possession, management, control and operation of the assets of a financial institution of this size and magnitude where he has no authority except such as
1230 is founded upon what has been declared to be an unconstitutional statute.

Now your Honor has already read the several affidavits —I think there are seven or eight on file here—showing that bonds were sold in July to the extent of roundly 5 million dollars, on July 10th and again on July 29th, the total amounting to approximately 5 million dollars.

Bank accounts have been transferred and changed, taken out of the name of the association and placed in the name of Mr. Ammann as conservator, when we of course have no way of knowing how we are going to get those assets back into the association's name again, unless we have the full cooperation of Mr. Ammann in so doing, or the specific and, we hope, immediate order of this Court that they be restored to the proper officers.

I might say as a practical matter that that looks very much like a maneuver to have those assets placed in a position where it will take extensive litigation to get them back into the name of the association. Maybe that can be offset if Mr. Ammann signs the necessary transfers of accounts and various assets voluntarily and pursuant to the order of this court voluntarily.

Now we find that I think Judge Dougherty yesterday evening suggested that the investment of funds by Mr. Ammann was necessary to continue the earning of interest and that as conservator, or even as purported con-
1231 servator, conservator de facto, that that was proper for him so do do, and we understand—I will grant you this is not strictly speaking in the affidavits but we have only been able to develop it this morning from the records, and so forth, and we haven't had time to make affidavits on it—but we understand that loans have been made in areas and to people considerably in excess of the size of loans that the association had formerly been making on similar property in the same district. I think the

figures were that they had been loaning around $2,000 on certain types of houses in a certain district and now they are loaning about $3,000 on that same type of house and the same district.

The business practices we feel have not been compatible with good practice as followed by the conservator. For instance, the tearing of signatures off of notes and trust deeds as a means of canceling them after recording, and virtually making it impossible to show the cancellation short of a quit title. The particular case here submitted to your Honor is already in difficulty, as I understand it from Mr. Wallace.

Mr. WALLACE. Here is the original mutilated document. It shows up a lot better than the photostat does. (Exhibiting document)

Mr. WESTOVER. It is not a question of someone having inadvertently done that, as shown by the affidavit of Mr. Ammann himself, that the signatures of said note and deed of trust were torn off before the instruments were
1232 returned to Mr. M. C. Stanford, the party who had cancelled the loan.

The other affidavits are rather extensive. There is also a great many letters from people who have been treated very discourteously, etc. I do not want to bore your Honor with reviewing all of those matters in detail, but it certainly indicates, in summation, to us that the business is not being handled in a manner to aid its continued growth as it has in the past 15 years, from $7,500 up to a 26 million dollar institution. Indeed, since the so-called conservator has had it in his possession it has gone down from roughly 26 million dollars to 16 million dollars in a matter of less than six months.

There are other various business practices, such as repurchasing accounts for cash without even taking signatures of the parties repurchasing them or turning them in. Of course where that is done by check the check itself is signature enough, but where it is done for cash there is nothing binding upon the former shareholder member except the lack of possession of their passbook.

There are other business transactions, such as instances of paying one woman who only had $800 on deposit, paying out to her something like, I think, $3,200 more than she

had on deposit, and even there was some question of whether the association, under the conservator's management, even wanted to take the money back. She
1233 offered it back and she finally had to go to a bank and have them send it back.

Those kind of practices we feel are not compatible with good business and justify our asking your Honor to exercise the equitable jurisdiction of this court in granting an immediate restraining order mandatory, if you wish to call it such, restoring the duly constituted officers to an immediate possession of their property—I say of their property; by that I mean their management of the property—of the association forthwith and to stop these practices.

We feel that that should be done instantaneously and before any other assets are removed or transferred or placed beyond the control of the officers or beyond the immediate control of this court. We understand that something like 10 million dollars—I am giving some of these figures from memory more or less—of assets have been placed on deposit with the San Francisco Federal Home Loan Bank. That is in litigation as to whether that is a proper bank or properly constituted. Loans have been made to it, and that places us in this position, your Honor, that when the duly constituted officers recover possession of the premises, as we assume they are entitled to do if we feel your Honor's decision is correct, and we are satisfied that it is, that places us in this position of having to seek from Mr. Fahey, the very man whom we have been litigating with here, the restoration of approxi-
mately 10 million dollars of our assets, or be in the
1234 position of being embarrassed for the possession of our immediate assets and funds unless he gives them to us voluntarily, he being in charge, at least indirectly if not absolutely directly, of an institution which is now being attacked as probably an invalid or an improper institution, the San Francisco bank so-called.

Now as to the power of this court to do this, we feel that there is no question of the Court's authority to do so. The granting of a temporary restraining order I believe is, under Section 380(a), we will all concede, I believe, is certainly within the power and discretion of the district

judge to whom the matter is presented, a single one-judge court. We feel we are entitled to the relief—may I express it that way, your Honor—fundamentally, equitably and factually. The only question I think that remains is how are the mechanics or the procedure best adapted to put into effect your Honor's and the three-judge statutory court's opinion of unconstitutionality and to cut this Gordian knot and unscramble the eggs and unravel this very complicated situation. We feel that the sooner that is done the easier it will be. Now if that is to be delayed for months, six, eight, ten, twelve months, while appeals are taken, if they should be taken, we feel it would be tremendously detrimental and might even result, in effect, in the total loss of the litigation even though we won it. It would be an empty victory.

1235 There are a good many people involved here, there are a great many parcels of real property involved—I don't believe they are going to remain quiescent indefinitely under this more or less, to them, uncertain situation. They expect their officers that they elect to be restored to possession forthwith.

I might say in that connection your shareholders' committee has—I don't think it is in affidavit form so I don't want to really go into it—but we have such a substantial volume of the remaining members.

The Court. It appears in an affidavit that you have some 56 per cent here.

Mr. Westover. Something like that, your Honor. So we feel that your shareholders' committee is equitably representing the majority of the shareholders.

I might say, those percentages are excluding any officers and directors and proxies which we feel—in other words, we have tried to remain impartial even to the present officers. The shareholders' committee, if they accept the proxies of the present officers, and so forth, would have even a larger percentage of control, so to speak.

Likewise there are a lot of very nominal accounts which under the rule would be entitled to a vote. In other words, the small schoolboy accounts, dollar accounts, things like that. There are around 3500 of those,

1236 I believe. There are certain other accounts that have been more or less questioned at different times

because of the smallness of those accounts, of which each would be entitled to one vote even though it is a very nominal amount. None of those—I say none, there may be a few but substantially none of those—large blocks of small accounts have been taken into account at all in this, although we feel that they could be readily obtained if needed.

Now to revert back to the mechanics or the procedure of how best to effectuate what we feel was the intent and purpose of the opinion of the statutory court, to the effect that the act, being unconstitutional, and the only authority Mr. Ammann and Mr. Fahey had was bottomed upon that unconstitutional provision that flows therefrom, that the entire litigation, if that is correct, is determinable from that decision or that opinion, and it flows as night follows the day that the only thing that can follow is the ultimate restoration of the duly constituted officers to possession of the property and management and control of their former shareholder members.

Now in doing that, to remove any possibility of question, we feel there is no possibility of question that the district court and a single judge of it, your Honor, has entire authority to grant a restraining order, either mandatory or otherwise, in effect restoring to full possession the officers of the association at any stage in the pro-
1237 ceeding if your Honor feels so advised and so to do.

That normally would require the reconvening, I believe, of the three-judge statutory court.

The Court. What would?

Mr. Westover. The preliminary injunction which would, of course, have to follow the temporary restraining order.

In other words, if we are granted a temporary restraining order I think it must be with an immediate hearing as quickly as possible on a temporary injunction which involves the constitutionality of a Federal act and enjoining the operation of an agency thereunder, under Section 380(a).

The Court. In other words your idea of procedure is that one judge has the power to issue the temporary restraining order?

Mr. Westover. Forthwith; yes.

The COURT. But to issue it pendente lite you must reconvene the three-judge court?

Mr. WESTOVER. For a temporary injunction as distinguished from a temporary restraining order; yes, your Honor.

My thought on that would be simply this—this is one of the mechanics. I grant you it is probably a little bit in uncharted fields. My thought is that the temporary restraining order be issued forthwith, the proper officers be restored to possession, that the matter be set down for hearing in conformance with Section 380(a) at such time as your Honor sees fit within the time of the stat-
1238 ute, that it can be continued from time to time as your Honor sees fit for good cause appearing and in the meantime we proceed with the settlement of the judgment and findings of fact and conclusions of law. That immediately upon the settlement of that judgment, which we believe would have to be done by the three judges, that then that in effect makes the preliminary injunction supersede it, so to speak, or makes it a moot question, because the entry of that judgment along the lines we have outlined following your Honor's opinion does call for restoration and possession, it declares the unconstitutionality of the statute, etc., and handles the entire matter.

Then either the preliminary injunction could be marked off calendar, if appeals were taken, and simply held in abeyance pending the determination of any appeal, if there were any, or upon the becoming final of the judgment entered pursuant to the statutory court's opinion the matter would be finally disposed of. There would be no need for further rehashing of the matter other than the rendering of appropriate accounts and things of that nature that are called for in the order.

The COURT. By the way, do you have all the appearances, Mr. Clerk?

The CLERK. I don't know all of them, your Honor.

The COURT. Let us get those now.

This is Mr. Westover, of Westover & Smith,
1239 representing the plaintiffs.

Mr. Tremaine, representing Robert H. Wallis, third party plaintiff.

Mr. WALLACE. H. O. Wallace, representing the defendant and cross-claimant Title Service Company.

The COURT. Mr. Chapman yesterday indicated you were representing the association.

Mr. WALLACE. Mr. Chapman was not present yesterday, your Honor. He is ill.

Mr. WESTOVER. He is very ill. These matters have been discussed with him. We have been authorized to present them with his full approval, and I will take the responsibility of that.

The COURT. He has joined in the motion?

Mr. WESTOVER. Yes.

The COURT. Let me see. There was another third party plaintiff.

Mr. WALLACE. Home Investment Company.

The COURT. Home Investment Company.

Mr. WALLACE. They are not represented nor affected one way or the other.

The COURT. Their deposit is in court here?

Mr. WALLACE. That is right, sir.

The COURT. The defendants here, John H. Fahey, Federal Home Loan Bank, Ammann and all units of
1240 any Governmental agency involved, are represented by Mildred Kluckhohn, Assistant United States Attorney. I do not think Judge Dougherty's appearance has as yet been made a matter of record.

Mr. Silverman?

Mr. SILVERMAN. I am representing Mr. Ammann and Mr. Fahey specially.

The COURT. And Mr. Dougherty is present, Mr. Dougherty's position being general counsel——

Mr. DOUGHERTY. Associate General Counsel, Judge, for the Federal Home Loan Bank system.

Mr. WESTOVER. May we have it clarified whether Judge Dougherty is now being associated i.. the matter or just being present. We have never had that quite clear in our mind.

Mr. DOUGHERTY. I should much prefer not to become officially associated in the matter until Mr. Walker gets back and then leave that to his wishes entirely.

The COURT. Mr. Carter indicated that yesterday.

Mr. DOUGHERTY. Yes. I would like the privilege of

addressing myself to the subject before the matter is through though.

The COURT. The record will show that you are present and you will be heard.

Mr. Bishop?

Mr. BISHOP. I don't prefer to enter any appearance, your Honor, at this time because there is nothing
1241 here that involves us.

The COURT. The record will show that you are here.

Mr. BISHOP. That is right.

The COURT. And your client in the matter is?

Mr. BISHOP. Federal Home Loan Bank of San Francisco.

The COURT. A unit of the Federal Home Loan Bank system, is that correct?

Mr. DOUGHERTY. That is correct.

Mr. BISHOP. Yes.

The COURT. All right. Who is this gentleman with you?

Mr. BISHOP. He is just with me. He is a friend.

The COURT. What is his name?

Mr. BISHOP. Garber.

The COURT. He has no official connection with any of these matters?

Mr. BISHOP. No sir.

Mr. WESTOVER. Does he represent the press?

Mr. BISHOP. No. He is an attorney.

The COURT. And these other gentlemen are?

Mr. WESTOVER. Mr. Gregory, the president of the Long Beach Savings and Loan Association.

Mr. WALLACE. Mr. Frazer, F-r-a-z-e-r. He is the escrow officer of the Title Service Company.

The COURT. Very well.

Mr. WALLACE. May I correct an error I believe
1242 the Court inadvertently made in describing the appearances for the Government? I believe you stated that they were appearing representing the Federal Home Loan Bank. I don't believe that is quite accurate. The only appearance here so far is for the Federal Home Loan Bank of Los Angeles, for whom an appearance has been entered as a third party defendant by O'Melveny &

Myers and Mr. Fitzpatrick, who are not present this morning.

There is one other matter——

Mr. WESTOVER. Just a moment. May I just straighten that out, your Honor?

The COURT. Federal Home Loan Bank appears all the way through here.

Mr. WESTOVER. The Federal Home Loan Bank of Los Angeles is not present nor have they been served on the ex parte pending motion for temporary restraining order. They were served and concurred in and approved as to form the findings of fact and conclusions of law and decree. This being an ex parte matter, service was of course not required on anybody but was given to the various other counsel as indicated by your Honor a couple of days ago.

The COURT. Very well.

Mr. WALLACE. In view of the statement made by Judge Dougherty a few moments ago that he does not appear of record, will counsel of record for Messrs. Fahey and Ammann approve the stipulation made in open court
1243 yesterday by Judge Dougherty that there would be no further removal of assets?

Mr. SILVERMAN. Mr. Dougherty made no such stipulation yesterday.

Mr. DOUGHERTY. I think that Mr. Westover requested—whatever the record shows—what he requested I believe was documents.

Mr. SILVERMAN. That is right.

Mr. DOUGHERTY. I said that there would be no such documents removed and I think Mr. Silverman, who was counsel of record, will approve that without any question.

Mr. SILVERMAN. That is correct.

Mr. WESTOVER. Does the reporter have the record available?

(The record referred to was read by the reporter as follows:

"Mr. WESTOVER. Might I ask one stipulation in the record from counsel, if we may have it, that pending the hearing of this temporary restraining order tomorrow, as I understand your Honor intends to hear it, nothing will be removed from the premises in Long Beach until the determination of that temporary restraining order.

"The COURT. I was under the impression at the hearing had that the Government was taking the position that nothing would be done concerning the assets, that the conservator would merely be a conservator and
1244 would not continue to invest money and the like. However, I have not checked the record to see if my impression is borne out by any statement made.

"Mr. DOUGHERTY. Your Honor please, if I may make just one statement very briefly, I think it will probably be the duty of the conservator under this type of conservatorship to try to invest the funds so that it would not lie idly and not bear any interest for the Association. I think that has been done. I think also it would be his duty to attempt, as best he could under these trying circumstances, to keep the business of the Association going on so that whoever did take over the Association eventually would have the benefit of what good will could be built up. I think that is what has been done.

"The COURT. I think if all counsel will return tomorrow morning at 11:00 o'clock I will then have time to read your affidavits and will hear from counsel on the matter of the application for the temporary restraining order.

"Mr. WALLACE. That being the case, your Honor, I anticipate that I will probably be unable to be here. I have had an engagement of long standing over the week-end, and in case I cannot break it, and in order to facilitate matters, may I request that Mr. Tremaine make such presentations as may be necessary on behalf of my client?

"The COURT. You may do as you like. If Mr. Tremaine is here and Mr. Westover is here you may make whatever arrangements you care to.
1245 "Mr. TREMAINE. I see no conflict as between my client and Mr. Wallace's. We are both interpleaders. I do not object, if that is satisfactory to the Court.

"The COURT. Very well. 11:00 o'clock tomorrow morning.

"Mr. WESTOVER. May we have the stipulation that there will be no removal of documents at least until tomorrow morning from the premises at Long Beach?

"Mr. DOUGHERTY. There will be no removal.

"Mr. WESTOVER. Thank you. I would like to have that of record.")

The COURT. Do any of the other persons who have joined in this motion care to say anything supplemental to what Mr. Westover has said?

Mr. WESTOVER. I had not attempted to go into citations because I think the statute itself, your Honor, is sufficient and gives the authority we are asking for. If the question arises we would of course like to be heard on the legal point.

Also I would like to file at this time the affidavit which has been prepared since last night. These have not been served because it is an ex parte matter, your Honor.

The COURT. These are all the copies?

Mr. WESTOVER. Yes, for the Court. The original and four as required. Then I have some other copies here for counsel.

The COURT. Maybe they will want to read these.

Mr. SILVERMAN. I would like to read it, your Honor.

1246 The COURT. The effect of this is an affidavit by Mr. Bacon that last night after 5:00 o'clock Mr. Ammann, Mr. Ray Williams, Robert Moore and E. M. Boreland removed large packages of records from the association.

Mr. WESTOVER. If your Honor please, may the record show that due to the number of copies required I only have one extra copy, but I will give that, I presume, to Miss Kluckhohn.

The COURT. Yes. She is the attorney of record.

Did you have anything at present to supplement the statement, Mr. Wallace?

Mr. WALLACE. Yes, your Honor, I have. I will take them in the inverse order.

With reference to what Mr. Westover said about the hearing on the preliminary injunction before a three-judge court, I wish merely to stress the fact that if the proposed decree or judgment is in the form submitted that it in and of itself will merge the order for the restoration of possession and, as Mr. Westover said, it will become moot, therefore not requiring the ultimate hearing by a three-judge court on a constitutional question.

The next matter is the time which might be anticipated for the settling of that judgment and its entry. With the

most expeditious handling of that matter it appears that the objections could not be prepared and offered
1247 prior to the end of next week.

Mr. WESTOVER. Pardon me. May I do one thing, your Honor, before counsel gets any further? I should file these other three copies of the motion, which I should have done the first thing. I am sorry I overlooked it.

The COURT. Go ahead.

Mr. WALLACE. Our five-day period automatically becomes six with the intervening Sunday, so next Thursday I believe would be the earliest day at which it could be considered, if there is no extension of time which, from the remarks made yesterday, we anticipate will be requested and granted.

The COURT. Extension of time?

Mr. WALLACE. For the preparation of objections to the proposed form of judgment.

The COURT. If there is any doubt about it, I will make an order right now.

Mr. WALLACE. There is no matter of argument about it. I merely wanted to point out to the Court the minimum time within which it might be expected to be considered.

Mr. DOUGHERTY. I may say to the Court, if I may, that there will be no additional time asked for for the submission of objections. We will meet the regular time without any request for further time.

The COURT. Without Mr. Walker being here?

Mr. DOUGHERTY. From the time Mr. Walker gets here.

1248 The COURT. You mean five days after he gets here? The rule is five days after service.

Mr. WALLACE. Which would expire next Wednesday.

The COURT. The five days?

Mr. WALLACE. Yes.

Mr. DOUGHERTY. I would have no objection at all, and I believe Mr. Walker would have none, if the hearing were set on these matters any time, say, two to three days after he returns.

The COURT. I don't know about setting the hearing, because Judge Orr is in San Francisco and Judge Ling has now returned to Arizona. I think whatever your

proposed findings are and your proposed objections are, you should transmit them and not until then is it necessary to have a hearing.

Mr. Dougherty. We will file them not later than next Thursday.

The Court. You probably will have them all ready when Mr. Walker gets back and all you will need is to get his signature.

Mr. Dougherty. We will do the best we can.

Mr. Westover. Since Judge Dougherty is not attorney of record, may we have the stipulation or statement approved by the counsel of record?

Miss Kluckhohn. Yes, it is approved.

Mr. Westover. Mr. Silverman?

1249 Mr. Silverman: That is agreeable.

Mr. Wallace. Following along my general trend of thought——

The Court. I will not make any order at this time extending the time to file objections.

Mr. Dougherty. We will keep our word, Judge.

The Court. I mean, if it is necessary I want to settle it now.

Mr. Dougherty. It won't be necessary.

The Court. All right.

Mr. Wallace. I was more or less thinking out loud, computing how soon this matter might be reached, and in view of your Honor's statement you anticipate distributing the same to the other two judges, in which event we might anticipate a lapse of as much as several weeks before the judgment finds its ultimate form and is approved. In view of that, it is going to be very, very difficult to adequately inform people who have judged from the press notices that the officers of the association either were or immediately will be restored to possession, and to tell them why it is not possible for us to go ahead and make the reconveyances which they are requesting. I have had at least two or three, not threats but virtual promises, of additional litigation, etc., by way of intervention by trustees under deeds of trust intervening in this matter, as did the Home Investment Company,

1250 or actions in the Superior Court to quit title, which would of course necessitate our asking the restrain-

ing hand of this Court to stay those actions pending disposition of the matter in this court.

All of that, as Mr. Westover indicated, certainly does not make for good will and develops a great amount of ill feeling and ill favor toward my client, Title Service Company, the trustee whose hands are bound in the matter.

Also supplementing what Mr. Westover had to say about the distribution of the assets of the association as taken over by the conservator, it is my understanding on information and belief that approximately 10 million dollars worth of promissory notes and trust deeds which secured the same have been deposited by the conservator with the Federal Home Loan Bank of San Francisco, notwithstanding that those very same documents are the subject matter of my bill in the nature of interpleader. Of course I couldn't deposit them with the registry of the court because I did not have physical possession of them.

I would like also to correct one, what is probably an inadvertent statement made by Mr. Westover, and that is with reference to the passbooks being left in the hands of the association after accounts were closed. The practice, as I understand it, and as I believe sets forth in one of the affidavits, is that those passbooks were re-
1251 turned to the depositors. I have had some clients who have had that experience, who have gone over and withdrawn their funds and the passbook after the entry is made of the balance on hand nil, the passbooks have physically been returned to them.

The Court. That is contrary to the previous practice?

Mr. Wallace. As I understand it, it is.

The Court. In other words, the evidence of the association that the depositor has no funds is the passbook?

Mr. Wallace. That is correct, sir.

The Court. Which the depositor keeps as long as he has funds but when he has none he surrenders?

Mr. Wallace. Upon the checking out of the account the passbook is surrendered to and picked up by the association.

The Court. It is his evidence of debt?

Mr. Wallace. That is right.

Then there were two matters adverted to by Mr. West-

over which particularly affect my client, Title Service Company. One is the affidavit of one of the now employees of the conservator, with reference to the fact that in at least one case which has come to her personal attention, FHA promissory notes and deeds of trust had been paid off and that she had made the necessary notices which had been forwarded to the Federal Housing Administration but that she had not, and had been instructed not to, enter that fact upon the books of the association and that the same were being carried in the nature
1252 of accounts receivable, indicating an erroneous reflection of the true facts which might have a very definite bearing upon the matter of obtaining a good and sufficient trust deed—I should say reconveyance—at the demand of the trustor.

And finally, the matter of the manner of the handling of some of the trust deeds. Mr. Westover referred to the mutilation of a trust deed and promissory note in lieu of canceling the same as supported by an affidavit of Mr. Hammion, which is attached to the affidavit of Mr. Frazer as it appears in the file, but since the photostats do not adequately disclose the condition of the instrument I would like to suggest that your Honor inspect the same and, if I may have it returned to my file.

(The document referred to was passed to the Court.)

The COURT. The notary's signature as well as the party's is destroyed.

Mr. WALLACE. It also shows in the photostat, but the file punch which had been put through the thing also deletes the page number of the recording date on the back of the trust deed.

The COURT. I see.

Mr. WALLACE. And for all of those reasons, in addition to those set forth by Mr. Westover, we feel, on behalf of Title Service Company, that in order to prevent further depletion or disposition of our security with
1253 which we are charged as trustee, that an injunction should be granted ex parte at this time to follow the usual course.

That is all.

The COURT. Mr. Tremaine?

Mr. TREMAINE. Yes, your Honor.

Mr. Chapman, as attorney for the association, wished me to express his regrets at being unable to be here and to convey your Honor his belief that a further delay would cause a further deterioration of the situation, and to convey to your Honor that he believes the motion, in which he is one of the moving parties, to be a very serious matter.

The rest of the argument is not at his suggestion but in line with it, in my own language.

I want to point out that it is impossible, from our side of the picture, to pick up all of the acts of mismanagement or bad management that may be taking place under the management of the conservator, that such information as has been obtained is, I believe, quite strong, particularly as a large part of it comes from people who are now employees of Mr. Ammann. They have risked their livelihood, employment, in making statements which they have, and I think should be taken in consideration of the fact that where a certain amount of fire is found and there is a large amount of smoke we may assume that there is more fire.

The constant deterioration of the volume of
1254 assets we think is the principal argument and speaks for itself. I wish to concur in the remarks of Mr. Westover, particularly as being adopted by the defendant Wallis.

The COURT. Very well. Miss Kluckhohn, do you wish Mr. Dougherty to speak on your behalf?

Miss KLUCKHOHN. Yes, if you please, your Honor.

The COURT. Very well.

Mr. DOUGHERTY. Your Honor please, I want to first express my sincere appreciation to the Court for permitting me to address myself to this matter. I recognize that things like this probably should be handled by the United States Attorney's office, and inasmuch as Mr. Walker is absent, and I had some familiarity with it, we decided it might be better for me to attempt, in my poor way, to present it to you.

Mr. T. EMAINE. Just a moment, if you will, Judge.

I believe, your Honor, that if Judge Dougherty is going to make an argument here that it ought to be done as a matter of record. I have no objection to his association but I don't think that non-counsel should address the Court.

Mr. WALLACE. I would join in that objection.

The COURT. I think in view of the situation, that Mr. Walker is not here, that he consulted me before he left—I did not know that this matter would be presented—and in view of the fact that Miss Kluckhohn stated that she did not have any particular familiarity with this matter
1255 —she didn't state that here. Maybe it would be well to have her make a statement in connection with it.

Miss KLUCKHOHN. I will make the statement, your Honor, that I have no familiarity with this case at all and, as Mr. Carter stated, I think there is no one in the office who has, so we ask the Court that Mr. Dougherty be allowed to be heard in the case.

The COURT. You adopt his statement as your statement?

Miss KLUCKHOHN. Yes, your Honor.

The COURT. The objection will be overruled. You may proceed.

Mr. DOUGHERTY. As I understand the position taken by Mr. Westover, Mr. Tremaine and Mr. Wallace, they are maintaining that this more or less extraordinary remedy is properly granted at this time because of the fact that the controversy has now been determined by this Court. Is that right?

Mr. WESTOVER. In effect, yes, that the heart of the matter has been determined by the Court in determining the unconstitutionality of the act, and that what authority, if any, of the purported conservator is bottomed upon the unconstitutional statute. We feel the rest of it flows therefrom.

Mr. DOUGHERTY. Is that your view, Mr. Wallace?

Mr. WALLACE. Yes, I concur.

Mr. DOUGHERTY. And you, Mr. Tremaine?

Mr. TREMAINE. And mine.

1256 Mr. DOUGHERTY. That being the position taken, if your Honor please, I should like to briefly read Section 380(a) of Title 28, defining the authority of a three-judge court.

"No interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be

issued or granted by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge. When any such application is presented to a judge, he shall immediately request the senior circuit judge (or in his absence, the presiding circuit judge) of the circuit in which such district court is located to designate two other judges to participate in hearing and determining such application. It shall be the duty of the senior circuit judge or the presiding circuit judge, as the case may be, to designate immediately two other judges from such circuit for such purpose, and it shall be the duty
of the judges so designated to participate in such
1257 hearing and determination. Such application shall not be heard or determined before at least five days' notice of the hearing has been given to the Attorney General and to such other persons as may be defendants in the suit:"—(and this is the part I am interested in)—"Provided, That if of opinion that irreparable loss or damage would result to the petitioner unless a temporary restraining order is granted, the judge to whom the application is made may grant such temporary restraining order at any time before the hearing and determination of the application * * *"

It is my view that in view of the position taken here, if they maintain that the matter has not been heard and determined by the three-judge court, that the power of one judge to act in this matter has now been foreclosed and that the application which they now have must be presented to the three judges.

I am merely saying that because this is a very extraordinary procedure and is apparently an attempt to secure final relief in their case before answer has been filed, before default or before even the decree of the court has been entered upon its opinion.

If that position is correct on the statute, it would seem to me that it would be necessary to have this hearing before
the three-judge court convened. My own suggestion
1258 would be—this is the way it seems to me this matter should be determined—they have submitted findings of fact, conclusions of law and a proposed decree. Those

were submitted very, very recently, just a few days ago. We have no disposition whatsoever to delay the final determination of this matter. I am certain that we would like to have it disposed of just as quickly as humanly possible and as it can suit the convenience of this court. We will put nothing in the way of a quick determination in so far as it is made in accordance with what we believe the law to be. We want that done. It is very essential to us to learn whether or not this section of the statute under which we operate is or is not constitutional. We must know that as soon as possible.

Now if the Court feels that there is anything in that particular statute to require the three-judge court to hear this matter, it is unnecessary to go further at this time. If not, I have some other authorities and some other argument which I would like to present.

The COURT. Give me the rest of them while I think them all over.

Mr. DOUGHERTY. All right.

The COURT. Has that section been construed, the portion upon which you are relying?

Mr. DOUGHERTY. If your Honor please, the only construction that I have been able to find in the short time I have had to look into it is found in the third volume of Moore's Federal Practice at page 3539 and subsequent, which volume cites the Stratton v. St. Louis & Southwestern Railroad Company, a Supreme Court decision, and makes this statement——

The COURT. What is the citation?

Mr. DOUGHERTY. 282 U. S. 10. It does not, however, cite the particular point that is here involved.

I call your Honor's attention to the statement under fourth and under fifth in that decision.

The COURT. Footnote four and five?

Mr. DOUGHERTY. I only have Moore's volume here and it is quoted in italics, fourth and fifth, which is the point that I think is rather important.

The COURT. There doesn't seem to be any fifth here.

Mr. DOUGHERTY. I have here the way it is written in this book. I don't know whether it is the same as it is there or not, sir.

(The volume referred to was passed to the Court.)

The Court. It involved here a state statute.

Mr. Dougherty. That is right. That was under Section 380, which was not quite as strongly written, I believe, as Section 380(a) in this particular regard.

The Court. It is the same language.

On page 17 I think probably is the only material portion of the opinion.

1260 "'The requirement of the statute has regard to substance and not to form. It matters not whether the injunction is called preliminary or interlocutory, or is styled a temporary restraining order, if it is granted to restrain the enforcement of state legislation and is continued in force until the hearing on the merits, without such restraint pending the suit being made the subject of consideration and determination by three judges as the statute requires.

In other words, here the district judge did not at any time call in three judges. He proceeded to grant the temporary restraining order, the defendant made a motion to dismiss, they heard it on the merits and did not call in three judges, and the Court held that he did not have the jurisdiction to hear it on the merits although he did have the power to grant the restraining order.

Now the next sentence here says:

"The temporary restraining order which the District Judge, acting alone, could grant is only to maintain the status quo, on proper cause being shown, for such time as may be necessary to obtain a decision upon the application for an interlocutory injunction by a court of three judges, which is to be immediately convened."

1261 Yet that doesn't go to this point as to whether or not after the three-judge court had been convened and they have filed their opinion and not followed it by a formal entry order.

Mr. Dougherty. Your Honor please, I do not contend that the Stratton case construes this particular point in this statute. I responded to your inquiry as to whether or not it had been construed, and it has as to that point.

This particular point on this statute I think is clear enough from the language of the statute itself. I think it is very clear:

"Provided, That if of opinion that irreparable loss or damage would result to the petitioner unless a temporary restraining order is granted, the judge to whom the application is made may grant such temporary restraining order at any time before the hearing and determination of the application * * *"

It is the conteption of these gentlemen here, as they have stated, that the matter has been heard and determined, and it is upon the basis of that determination that they are seeking this extraordinary reimedy. Either the matter has been determined or it has not been determined. They maintain it has been determined. If so, their application should be made before a three-judge court, under the words of the statute.

1262 The Court. It being a corrolary of your position that the application to oust the conservator was not included in the previous application?

Mr. Dougherty. That is true; yes, your Honor. My position on this particular matter is simply this, that the statute having set up a procedure, it has to be followed. The statute having granted certain authority to the judge who calls a three-judge court, that authority is limited by the provisions of the statute, and it is my feeling that we should comply very strictly with the provisions of the statute in securing any orders.

They are worried about titles being clouded. If orders are entered here without the strict compliance with the statute, I would hesitate to attempt to assure anybody that the Title Insurance Company would come in and approve all these titles. Whether the Title Service Company in its duty to its clients would want to execute reconveyances, I don't know.

The Court. Do you wish to be heard on this point?

Mr. Westover. Yes, if your Honor please:

I think counsel is failing to distinguish what his question to us a few minutes ago implied and what our replies implied. We feel that the fundamental of this entire proceeding is the constitutionality or unconstitutionality of the section, and that in the determination of that everything else necessarily flows therefrom. But that

1263 doesn't mean that we feel that because of that these matters of depletion should be allowed to continue

while appeals are pending and determination is going to be made ultimately final which may be a matter of many months if appeals are taken. We feel this, that this is a new application for a temporary restraining order on the question of immediate repossession as distinguished from the former motion which was a motion for a restraining order restraining the administrative hearings and a motion for restraining merger and commingling, etc.

Now we feel that we are entitled to come in on this motion ex parte.

The Court. Do you, by making this motion, concede thereby that it was not before the Court, the taking over of the possession?

Mr. Westover. No. We feel that our complaint covered the entire matter, your Honor. The complaint asked for restoration of possession, permanent injunction, accounting, and so forth, the entire matter. But the first motion was a temporary restraining order followed by an application for a permanent injunction to restrain merger, and so forth and so on.

The Court. I gathered from your previous statement and from reading your proposed findings of fact and conclusions of law that you consider the entire matter disposed of by disposition of the constitutionality of Section 5(d).

Mr. Westover. That is right, your Honor, as
1264 soon as those are entered.

The Court. And that you are making this request only for the purpose of preserving your position until the decree can be formally entered?

Mr. Westover. That is correct, your Honor.

The Court. As submitted.

Mr. Westover. That is correct.

The reason for that is that where the three-judge statutory court has determined a matter which is determinative of the entire litigation, then they are justified in doing that.

The Court. What is your authority for that?

Mr. Westover. Then they are entitled to go ahead and make their final determination.

The Court. Do you have some authority?

Mr. Westover. Yes. We have the aut-ority along the line of the Coca Cola Company v Los Angeles Brewing

Company, which is the decision of Judge McCormick of this local district court, which has never been overruled since its entry. The citation of that is 1 F.R.D. 67.

The COURT. It is in the Federal Supplement too some place, is it not?

Mr. WESTOVER. We were unable to find it there, your Honor.

The COURT. What is the case number?

Mr. WESTOVER. 427-M. It was a matter of patent
1265 infringement.

The COURT. What was the date of that?

Mr. WESTOVER. November 6, 1939.

Reading from the decision:

"The court believes that these matters are admittedly in the sound discretion of the court, to be exercised judicially and not arbitrarily."

The COURT. What matters?

Mr. WESTOVER. That is the start of the Court's decision. That is applying, of course, to this action of the Coca Cola Company on a hearing to show cause why a preliminary injunction should not be issued restraining pendente lite the commercial use of the term "Coke" in the manufacture, sale and marketing by the defendants of a beverage under such name.

"The court believes that these matters are admittedly in the sound discretion of the court, to be exercised judicially and not arbitrarily. There is, however, a fixed principle in patent law and I dare say it is applicable in trademark litigation as well. It has been applied in many cases by this court. It operates where there isn't anything to be gained by prolonging litigation except to afford one or the other of the litigants a respite and moratorium to suspend the enforcement of rights; but that is no
1266 safe criterion in determining the course that the court should follow on an application for a preliminary injunction. It usually applies in patent litigation where there has been a prior adjudication validating a patent and the only question at issue is one of infringement. There the situation can be arrived at generally, except in so far as the question of infringement is concerned, just as securely and much more satisfactorily on the preliminary application as it can by a trial after a long hearing, expensive both as to time and as to money.

"What is there here that can be modified or changed of that needs any further exploration? What factual situation is there that could be any more definitely presented to the court in January than today? I think there is nothing. There may be many more affidavits filed on each side of the question. There may be a great deal of oral testimony developed on both sides of the issue. There may be extensive arguments made as to the effect of those matters but, upon analysis, the same issue will be presented. If that is the case, it should be determined summarily."

Then jumping:

"As a result of that protection, there has
1267 developed something that is perhaps as valuable as the article or the name itself and that is the good-will that attends the property right."

We feel that that is involved in this situation here, the stability and integrity of this association is being severely undermined.

"It is said that these matters can be properly covered by damages. I am not sure that they could be properly covered by damages. The beverage of the Los Angeles Brewing Company may be more potable."

I would like to just digress there, that the bond which has been filed by Mr. Ammann, your Honor will note from the affidavits on file, is in the amount of only $100,000, and runs to Mr. Fahey, not in favor of the association, and hence affords no protection, in our opinion, whatsoever.

A permanent injunction was granted in this case without further proceedings.

The Court. The Court rendered an oral decision. That will be in here then.

(Addressing Mr. Wallace.) Did you find it?

Mr. Wallace. I didn't check the file, your Honor, to discover the decision. All I checked was to find out if the injunction was made permanent, which was not stated in the opinion.

1268 Mr. Dougherty. I fail to see where this decision on patent law has anything to do with the authority of a three-judge court. The authority of a three-judge court is a matter under Section 380(a).

Mr. Tremaine. Three-judge courts are a district court and have the same power.

The COURT. My inquiry went to the proposition as to whether or not the three-judge court would have the power to grant the relief which they are requesting by submitting this decree. In other words, whether or not this is a new application under the statute or whether or not it is merely supplemental to the other. If it is a new application for a different thing and the movants here cannot have an irreconcilable position in that respect, if it is a new application then your position concerning the statute would not apply.

Mr. DOUGHERTY. If it is a new application, I have some cases which I, of course, would like to submit to your Honor also. But I suppose perhaps we had better finish this discussion before I attempt to submit those, or whatever you wish.

Mr. WESTOVER. I might submit just one thing. I think I had better file notices of motion for preliminary injunction and the motion for the—of course they will not be ready until your Honor sets a date for hearing on them, if you do.

1269 Mr. TREMAINE. I would like to add one comment, if I may, your Honor.

Judge Dougherty's question caught me a little off guard. There is a decided distinction, I think, between a judgment and an opinion. Where I answered at least, and I think my colleagues over here had the same idea, the opinion having expressed a determination of the three judges, if the three judges follow their opinion, which we are assuming they will, will become a decision and a determination upon signature and entry. That has not yet been done and that is in large part the reason why the moving parties are here today, to get some interim relief. In other words, there not being a judgment, although in one sense there has been a determination, I think in a technical sense we were talking about a determination which naturally would flow from the opinion. I don't think we ought to be misled on the technicalities of language. I think the meaning was the same. There is no enforceable judgment until your Honor and the other two judges sign one. There can't be. There has been no relief asked for in the way of temporary restraining orders, motions for preliminary injunctions, which in themselves

by their own prayers would authorize an interim order giving a mandatory injunction for possession.

The Court. In other words, your position is that the language reads that the judge to whom the applica-
1270 tion is made may grant such temporary restraining order at any time before the hearing and determination but that there is no determination made until the judgment is entered.

Mr. Tremaine. Yes, your Honor.

Mr. Wallace. Under a far stretch of the imagination, all three of the gentlemen may change their minds this afternoon and the opinion would be invalidated and a new opinion rendered prior to the entry of the judgment.

It seems to me, with reference to the argument advanced, that Judge Dougherty is making an argument somewhat similar to the argument which was advanced before the three-judge court in reference to the attack on the legislation not being an attack upon the act itself, and which was so summarily disposed of in the opinion in a one-line statement.

Mr. Tremaine. As to the powers of a single judge where there is a three-judge court, I don't have it here with me, but in 17 Cyc. Federal Procedure, second edition, page 161, Section 6601, I find this quotation—and there are cases cited—"The power of a judge to grant a restraining order is the same as his power to grant an injunction proper even where a three-judge court is necessary."

Now in essence we are only asking what has already been done twice here before, a temporary restraining order to be followed by the statutory procedure of convening of the three judges on a preliminary injunction. But,
1271 as Mr. Westover and Mr. Wallace have said, if the decree and judgment is entered prior to the hearing by the three judges I believe it becomes a moot question. There would be no need for it. There is no other way to get temporary relief.

The Court. If the decree is entered.

Mr. Tremaine. If the decree is entered before the three judges are convened on the preliminary injunction—and the decision covers it—then the issue on preliminary injunction is moot.

The Court. You mean before the three judges are convened upon this present current request?

Mr. TREMAINE. Yes.

Mr. DOUGHERTY. My feeling in the matter, frankly, Judge, is that the ordinary and logical way, one which will not incur too much delay—this case has been going on since May 25th, I believe—would be to have the decree entered in accordance with the opinion as quickly as possible. We will agree to do everything possible to facilitate the hearing on it ourselves.

Mr. WALLACE. In that matter, if the Court please, this is a court of equity and I think, going back to the play upon words made by Judge Dougherty yesterday, and to which we had to appeal to the record here and found that he had bound himself only to preclude a removal of documents and not property, followed by the
1272 evidence of removal of something which may very well have been either documents or property——

Mr. SILVERMAN. Maybe some clothes.

Mr. WALLACE. It may have been. I am not in position to say.

Mr. WESTOVER. Four or five brief cases full.

The COURT. Manila envelopes are not ordinarily used to carry clothing. I say not ordinarily. They have been known to have been used to carry clothing.

Mr. WALLACE. It is my feeling at least that the equity arm of the court should be extended to preclude further exhaustion or depletion or deposition of the property or documents of the association, as has apparently been taking place and consequently we may most readily expect to continue to take place so long as the conservator remains in possession, be it one day or two weeks.

Mr. DOUGHERTY. If your Honor please, I want to say one thing personally on this matter, and that is this, that I said I agreed that no documents be removed yesterday. I could not have agreed that nothing could go out of the association or in it unless we were to close it up this morning and not operate it, and to tell the public that the institution was closed, because obviously they would pay out money and they would do their ordinary business to people who are coming in to withdraw. And had Mr. Westover mentioned documents—I thought he did
1273 so intentionally—so with that thought in mind, to avoid closing the institution, I made that statement.

I couldn't agree otherwise without breaking my word or without telling Mr. Ammann to lock it up this morning.

Mr. WALLACE. Would Judge Dougherty contend for a moment that removal after business hours, approximately half an hour after he made his statement to the Court, would come within the province of those things which he has just discussed, of the paying out of money to shareholders, etc.? I can't conceive that he will go that far.

Mr. DOUGHERTY. I have not yet read the affidavit. I have not had opportunity to discuss the matter with these people. As you and I know, one-sided affidavits may present a very wrong factual picture. I am not saying that it does in this case, but it may. And until I could learn that matter and know what I am talking about I could not make any statement here on that. When I make a statement I try to have it accurate and honest.

Mr. WESTOVER. May I just say this, your Honor. If your Honor will recall, and the record will bear me out, Judge Dougherty was of the opinion yesterday afternoon that it was advisable for the conservator to make investments to continue the earnings of the association. With that thought in mind we endeavored over the night to ascertain how that had been done, at least in some small measure, particularly as to the 5 million dollars of
1274 bonds that were sold in July, approximately that, and we presumed had been either reinvested or paid out to shareholders.

We find that there is no deposit not drawing interest since that time as a result thereof $4,729,156.01 which is not drawing interest, and we submit the affidavit of Mr. MacArthur to that effect.

There are other matters in there also.

The COURT. Do you have a copy of that for opposing counsel?

Mr. WESTOVER. Unfortunately, due to the number of copies required, we were unable to have a large number in this short time. I only have one copy. We will give our one copy to Miss Kluckhohn.

The COURT. Do you have some other points that you want to urge, Mr. Dougherty?

Mr. DOUGHERTY. Yes, I have, your Honor.

In the Southern Pacific Railroad Company v. the City

of Oakland, cited in the Northern District of California, Federal Reporter, Volume 58, page 50, the Court said, in relation to a preliminary injunction—let me say first, your Honor please, this action was started May 25th and at that time Mr. Ammann was in as conservator and was in possession of Long Beach Federal, and has been ever since that time. The Court says in relation to the extent of the preliminary injunction, on page 52:

1275 "But what should be the extent of the preliminary injunction? The defendants contend that it cannot be made to undo that which has been done. The plaintiff contends, contra, that it should have such restraint as to permit the rstoration of the property to the condition it was in before it was disturbed. In 1 High, Inj. Section 4, the rule is laid down as follows:

"'The sole object of an interlocutory injunction is to preserve the subject in controversy in its then condition, and, without determining any questions of right, merely to prevent the further perpetration of wrong, or the doing of an act whereby the right in controversy may be materially injured or endangered. * * * The jurisdiction, therefore, being exercised to prevent the further continuance of injurious acts, rather than to undo what has already been done, on an interlocutory application for an injunction, courts of equity will only act prospectively, and will interpose only such restraint as may suffice to stop the mischief complained of, and preserve matters in statu quo.

'The text is supported and illustrated by several cases.

In Murdock's Case, 2 Bland, 461, the action was to
1276 restrain the erection of a fence, and to remove the fence already erected, which included part of plaintiff's land. The injunction was denied as to the fence, which was erected, the court saying 'that plaintiff asked the court now and at once to put forth in his behalf its remedial, as well as its conservative, powers,' and added: 'The principal object of an injunction in cases of this kind is to prevent irreparable injury by preserving things in their present state, but, if an injunction were to order anything pulled down or undone, it is obvious that it might be itself used as a means for producing that very kind of irreparable injury to the defendant which the bill

charged him with being about to perpetrate against the plaintiff."

This case I think is substantiated in the case of——.

The COURT. I think the Court has the power to oust somebody from possession of property if they have taken it even on the granting of preliminary injunction. It depends upon which status quo you want to preserve. The status quo which they contend has caused the injury is the status quo as it existed before the party came in.

MR. DOUGHERTY. They ordinarily use it as status quo pendente lite, which means pending the litigation. I believe that is right. That is my opinion at least.

I have some other citations on this if your Honor
1277 wishes to hear them. One is Community Natural Gas Company v City of Cisco, 65 Fed. (2d) 328; also Warner Bros. Pictures, Inc., et al., v Gittone, etc., 110 Fed. (2d) 292. In that case the Court said:

"In the present case the trial judge found that the exhibitor plaintiffs have suffered and will continue to suffer irreparable loss unless given injunctive relief. The defendants strongly urge that this finding is not supported by the record. We need not decide this question, however, for we are clear that the effect of the preliminary injunction which the court granted was not to preserve the status quo but rather to alter the prior status of the parties fundamentally. Such an alteration may be directed only after final hearing, the office of a preliminary injunction being, as we have pointed out merely to preserve pendente lite the last actual noncontested status which preceded the pending controversy. Audenried v. Philadelphia & Reading Railroad Company, 68 Pa. 370, 8 Am. Rep. 195; Fredericks v. Huber, 180 Pa. 572, 37 A. 90. Irreparable loss resulting from refusal to accord the plaintiff a new status, as distinguished from interference with rights previously enjoyed by him, does not furnish the basis for interlocutory relief."

1278 Now in addition to that is the case of Spring Valley Water Company v City and County of San Francisco, et al., page 667 in 165 Federal Reporter, and the particular point that I am interested in, or that applies to this case—it is a long case—will be found on

page 710. I wouldn't want you to have to wade all through the other pages ahead of time.

If your Honor please, that is all I have to advance at this time.

The COURT. Do you wish to be heard further?

Mr. WESTOVER. Simply this, your Honor, that I believe your Honor has already pointed out what we believe is the fallacy of counsel's argument, and the case itself pointed it out as he read it as I caught it, immediately prior to the non-contestable position. Ever since the conservator, so-called, went into possession there has been a serious contest as to the best of our ability continuing without interruption, and I believe that it was only within a matter of seven or eight days or less, that complaint was filed just as rapidly as documents could be drawn, and certainly there has been a contestable position here all along.

The COURT. I think the Court has general power. I do not think the Court is limited merely to the restraining of the status of the parties after they have done something which it is maintained will cause irreparable injury.

A person might go in and take possession of a
1279 man's granery full of wheat and start feeding it to hogs and say, "That is all I am going to do," but if all I could do would be to restrain him and preserve that status quo he could keep on feeding the wheat to hogs until there wouldn't be any wheat.

Mr. SILVERMAN. He could be restrained from feeding the grain to the hogs, your Honor.

The COURT. I couldn't do that under this position because that is what he would be doing. If he had been in there for a week feeding the wheat to the hogs, in that position that is all I could do.

Mr. SILVERMAN. There is a difference in restraining him from feeding the wheat to the hogs and mandatorily enjoining him to return the wheat to the former possesser.

Mr. WALLACE. We are not asking that all the wheat be restrained at this time; we are just asking that so much of the wheat that has been fed to date be returned.

Mr. DOUGHERTY. You are asking complete relief be granted. You are asking that Ammann be taken out of

possession and determine the entire controversy in this particular matter.

Mr. WESTOVER. May we state that we feel that an extraordinary situation requires an extraordinary remedy.

Mr. SILVERMAN. Within the authority of the Court.

Mr. WESTOVER. Your Honor, the authority of the Court so to do which has been granted it under the pro-
1280 visions of Section 380 (a) for that very purpose, and certainly we have got an extraordinary condition here where the Court, having decided that these people have no authority to be there, yet has to sit idly by and let them continue to dissipate the assets of the association because this Court, they now say, has no authority or power to prevent that.

The COURT. I think that if the question turns upon the proposition as to whether or not the issuance of this temporary restraining order is more or less of an administrative matter, carrying out the previous decision of the Court, if that is what it is, I think a single judge can do it. I do not know where to lay my hands on the authority now for it, however. If it is not that, then I do not know.

I see it is 1:00 o'clock. I would like to study the matter over a little while, also get some lunch.

Mr. SILVERMAN. May I make one suggestion, your Honor? It seems to me the argument here has proceeded on a fallacy all the way through, and that is, regardless of how we consider the decision heretofore rendered by this Court that it is a final decision. There can be no final decision in this case until the defendants have had an opportunity to file an answer and the plaintiff's have made their proof. Until then there can be no final decree in this case.

The COURT. I think there can and must be a decree on the decision of the three-judge court. In reading
1281 the statute here, if it is to restrain a statute as unconstitutional, and a three-judge court holds it unconstitutional, that is the issue involved.

Mr. SILVERMAN. May I take exception to that remark, your Honor, because it isn't the only issue involved?

The COURT. That is what we called the three judges for, is it not?

Mr. SILVERMAN. You might read 309 U. S. 310 and see what we called the three judges for.

The COURT. All right.

Mr. WALLACE. In the meantime, if I recall it, Judge Orr took considerable time limiting the issue to be tried before that court, and that was the issue strictly.

The COURT. There is no doubt but that that was the matter that was tried and argued, the constitutionality of Section 5 (d).

Mr. SILVERMAN. For the purpose only of determining whether or not a temporary injunction should be issued. This Court doesn't know, nobody knows, whether or not this conservator is in possession by virtue of an agreement between all the parties.

Mr. WESTOVER. What!

Mr. WALLACE. What!

Mr. WESTOVER. We certainly will deny that, on behalf of the Shareholders' Committee.

1282 Mr. SILVERMAN. Certainly you will deny it but that is no proof it isn't so.

Mr. WESTOVER. The affidavit is on file as to whom we represent.

The COURT. In that connection, I would like to observe that by making the objection to the motion which was made on behalf of the conservator and on behalf of Mr. Fahey and the various parties, and not filing any affidavits, they thereby conceded that the allegations of the affidavits were correct.

Mr. SILVERMAN. For the purposes of the motion only for a temporary injunction and only for that purpose.

The COURT. What is this about in 309 U. S. 310, Mayo, Commissioner, et al., v. Lakeland Highlands Canning Company?

Mr. SILVERMAN. In view of what your Honor just said, I think it would be useless to read that.

The COURT. Why? Why do you make that observation, sir?

Mr. SILVERMAN. Because your Honor doesn't agree with me on the purposes on what was presented to this three-judge court. It was my impression that the only thing that was before this three-judge court was a motion, or

two motions for temporary injunctions, and that the hearing on July 15 and 16 was in respect of those two motions.

The COURT. What do you maintain the Court in this case holds?

Mr. SILVERMAN. That the only matters before the
1283 three-judge court were the motions for temporary injunctions.

The COURT. Based upon the invalidity of the statute?

Mr. SILVERMAN. Well, that is what the Court decided; yes.

The COURT. That was the basis of their motion, that the statute was invalid.

Mr. SILVERMAN. Yes. That is what they alleged in their motion, that the statute was invalid.

Mr. SILVERMAN. Yes. That is what they alleged in their motion.

The COURT. It is your position then that this is a new application?

Mr. SILVERMAN. I haven't any position on that, your Honor. I don't know exactly what it is. It sounds to me like a final decree.

The COURT. No, this new application.

Mr. SILVERMAN. I know the motion that they filed. It sounds like a motion for a final decree because all the remedy which they ask by this temporary restraining order are the remedies which they could obtain by, and only by, a final decree, all the material remedy. There are some minor ones.

The COURT. Well, this case is a little mixed up apparently. The judge didn't make any findings of fact, conclusions of law, or write an opinion or anything. They just said "We find the act unconstitutional."

1284 Mr. WESTOVER. Just one that might be of some help to your Honor, I might point out that under the new rules that were adopted September 16, 1938, we should limit ourselves to somewhat recent cases because those new rules apparently have endeavored to broaden the equity power of the Court to do equity. Rule 54 in reference to judgments has this provision, among others, in it:

"When more than one claim for relief is presented in an action, the court at any stage, upon a determination

of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. * * *"

Now we are in effect simply asking the Court to follow its opinion to proceed upon equitable documents and afford the protection that we feel we are entitled to from the further dissipation of our assets.

Also there are numerous cases holding that a mandatory preliminary injunction may be issued in the discretion of the Court. If your Honor has any doubt about that, we have several cases on that to cite for authority.

The Court. When is a determination of the issues material on a particular claim? The thing that was material to the particular claim was whether or not
1285 the statute was constitutional.

Mr. Westover. That is determined.

Mr. Dougherty. It hasn't been determined yet. That is what bothers me.

Mr. Westover. We feel at least it has at this stage of the proceedings.

Mr. Tremaine. It has been announced.

The Court. I would like some time to study this over. Do you have anything else to offer? Do you have some other case that you think I ought to read but won't?

Mr. Silverman. I didn't intimate that, your Honor, at all. I think Judge Dougherty has one case that might be interesting. I do not have the book here, but I believe it is 112 Fed. (2d) 430.

The Court. Selchow & Righter Company v. Western Printing & Lithographing?

Mr. Silverman. Yes; that is right.

The Court. "Where the granting of a preliminary injunction would give to plaintiff all the actual advantage which could be obtained by plaintiff as a result of a final adjudication of the controversy in his favor, a motion for preliminary injunction ordinarily should be denied"?

Mr. Silverman. That is right.

The Court. I think that is correct.

"Where the denial of a motion for preliminary
1286 injunction will result in great injury to plaintiff and in defendant's getting substantial advantage to

which he would be entitled only as the result of a final adjudication in his favor, the preliminary injunction should be granted if defendant's interest can be protected by an indemnifying bond."

But I do not think under any circumstances the defendant's interest here could be met by an indemnifying bond except as far as costs are concerned. The defendant here claims no personal right to the possession of the property. Isn't that correct?

Mr. SILVERMAN. As a matter of fact I don't believe the defendants claim any right to the possession of the property. The right to the possession of the property is in the Long Beach Federal Savings and Loan Association, and there has been a lot of loose talk about the respective rights of the conservator and the officers when neither one of them have any rights except when it comes to a question of management, and that is the only thing that is in issue in this case, is a question of management. All the property belongs to the Long Beach Federal Savings and Loan Association, whether it is managed by the officers and directors or whether it is managed by the conservator. It still belongs to the Long Beach Federal Savings and Loan Association and nobody else.

Mr. TREMAINE. Then you agree on the judge's comment on costs?

1287 The COURT. In other words, my point is, whatever Ammann is doing he is not doing it by virtue of any personal claim of right.

Mr. SILVERMAN. I wouldn't want to substitute my judgment for the Court's as to what bond should be required, if a so-called restraining order, such as this, is issued.

The COURT. I did not get the first part of your statement.

Mr. SILVERMAN. I said, I wouldn't want to substitute my judgment for the Court's.

The COURT. I am not asking anybody to substitute their judgment for mine; I am asking for your thought.

Mr. SILVERMAN. I have no thought on that matter at all, your Honor.

Mr. WESTOVER. Might I refer your Honor to, I think it is the last affidavit attached to our motion, from the URFG

in reference to the current bond on the officers at $200,000.

Mr. WALLACE. I think, your Honor, it is the last one attached to the last file.

The COURT. Yes. The current bond of the officers——

Mr. WESTOVER. Is double that of Mr. Ammann and runs in favor of the association and not in favor of Mr. Fahey, as does Mr. Ammann's.

The COURT. Let me see now. One other thought in connection with this matter. If I do or do not
1288 grant this, is there any procedure for either side in whose favor I do not decide it, to test that by a writ of mandate?

Mr. WALLACE. I believe a writ of mandate will lie, your Honor. That is a writ requiring the Court to exercise its discretion and not criticizing or changing the discretion exercised.

Mr. DOUGHERTY. The writ of mandate will lie, I believe, your Honor please, on only the one question, that is, whether or not you can do this as a single judge or whether it has to be by a three-judge court.

The COURT. That is what I was coming to.

Mr. DOUGHERTY. As to the other part of it, that is a rather problematical proposition. For instance, if you should grant this or should not grant it, if the effect of this thing is to make a final decree of the rights of the parties, I am very much inclined to think, although I wouldn't say so here on my own judgment yet, I am inclined to think that an appeal would lie also.

The COURT. Let me take it step by step.

The movants here are asking me to issue this temporary restraining order. Suppose I decline. Do they then have the right to go to the Circuit Court of Appeals and compel me to exercise discretion? Suppose I decline on the ground that I have no jurisdiction under Section 380(a), as advocated by you?

1289 Mr. WALLACE. Then mandate will lie.

The COURT. Then mandate will lie?

Mr. SILVERMAN. I would be inclined to think so.

Mr. DOUGHERTY. I doubt if the mandate would lie from the Circuit Court of Appeals.

Mr. WALLACE. My understanding is that mandate

would lie to require the exercise of the discretion but not to correct the same.

The COURT. Suppose I decline to act on the ground that under Section 380(a) I do not have the power to act, or the jurisdiction to act, as contended for by Mr. Dougherty, then would you be able to go to the Circuit Court of Appeals and get a writ of mandate to compel me either to act or to convene the three-judge court?

Mr. SILVERMAN. I think, your Honor, they could get a mandate from the Supreme Court.

The COURT. Well, it is a long way to Washington from here.

Mr. SILVERMAN. Yes, it is.

Mr. WALLACE. My curbstone opinion is that mandate would lie, but in view of the facts it would be futile.

Mr. WESTOVER. Yes. The timing would *be* impractical. The damage would be done before we could accomplish the purpose.

The COURT. I don't know. You can get a summary writ of mandate.

1290 Mr. SILVERMAN. I don't understand that, in view of the fact that this case has been under advisement since July 16th, which is almost two months. It doesn't seem that three or four more days would make any difference.

Mr. WESTOVER. Due to the fact that within 48 hours, it is our information that the Los Angeles bank, to the tune of 43 million dollars was moved out within 48 hours.

Mr. SILVERMAN. There is a temporary restraining order in effect preventing merger. You know that.

Mr. WESTOVER. Oh, yes, but not of moving out.

Mr. DOUGHERTY. I don't know whether that decides the question you submitted here or not, but I think it does on the one side.

The COURT. Let us assume that I grant their temporary restraining order as prayed for. Would you then be able to go to the Circuit Court for a writ of prohibition?

Mr. DOUGHERTY. No.

Mr. WESTOVER. They have a more rapid remedy, your Honor.

Mr. DOUGHERTY. The only remedy we would have would be the Supreme Court.

Mr. Westover. No. They would have a remedy of making a motion to set aside your temporary restraining order, and if that was refused an immediate appeal therefrom.

Mr. Wallace. They may make that within two days, under the rules.

1291 Mr. Westover. Under the act itself, Section 380 (a), it provides for that condition.

Mr. Wallace. It might also be tested summarily by a contempt if they saw fit so to do and habeas corpus following the same.

Mr. Dougherty. I would hate to have anybody subject himself to that sort of thing. That is one of the things I do not like to have done.

The Court. You say there is a provision for remedy in Section 380 (a)?

Mr. Westover. Yes, your Honor, the very last part of it. It may be 380 (a), or 381.

Mr. Silverman. That has to do with Interstate Commerce Commission, doesn't it?

Mr. Westover. No.

Mr. Wallace. There is the two-day period, I know that.

The Court. In the Federal rules?

Mr. Westover. Yes.

Mr. Dougherty. Any action taken, your Honor please, as I understand your thought in the matter, would be an action pursuant to or more or less an administrative action under the opinion of the three-judge court.

The Court. No, no. I posed that as an inquiry. I did not intend to announce that as a conclusion:

What I am inquiring now is, whatever action I
1292 take, I want to take it in the manner which will permit either side or both sides to get an immediate review some place, if they desire.

Mr. Dougherty. Would your Honor be inclined to grant a stay of a few days in the event such an order was entered one way or the other?

Mr. Wallace. That would be over our most violent objection.

The Court. I do not think I can justify that with the issuance of the order. If the order must be issued, and I

conclude I have the power to issue it, then I do not think it would be consistent with the conclusions upon which the order is based for me to stay the execution.

Mr. WALLACE. This two-day provision appears in Rule 65, the last portion of Subdivision (b):

"* * * On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require."

The COURT. On this other case, this case that is cited here from Stratton v. St. Louis & Southwestern
1293 Railway, the Supreme Court pointed out that the action of the district judge there was without jurisdiction and that an appeal would not lie. They appealed from his decision to the Circuit Court of Appeals and appealed from that to the Supreme Court, and the Supreme Court pointed out that there was no jurisdiction in the Circuit Court of Appeals to hear the appeal, that the district court was without jurisdiction and that the proper remedy was a writ of mandamus.

Mr. WALLACE. I was about to suggest that there is immediate review in case it is seriously contended that you are without jurisdiction, and should you see fit to issue such an order, that the writ of mandate will lie to require the recalling of the order and it should be found to be in excess of your jurisdiction.

The COURT. In other words, if I should issue this then the parties would have a right for a writ of mandate to compel me to recall the order on the ground that I exceeded my position, if your position is correct?

Mr. WALLACE. That is right, sir.

Mr. DOUGHERTY. I would be inclined to think so, if your Honor please, under the Stratton case. In that case, as I recall, they appealed to the Supreme Court and the Supreme Court treated the appeal from the Circuit Court of Appeals as an application for a writ of mandamus, and heard and decided it. That is my recollection.

1294 The COURT. "The question is thus necessarily presented, although not raised by the parties, with

respect to the validity of the decree entered in the district courts, and the jurisdiction of the Circuit Court of Appeals to entertain the appeal * * *"

Mr. TREMAINE. I think it is on page 16, your Honor, the question as to whether the three-judge court should have been convened or not:

"Accordingly, where a court of three judges should have been convened, and was not, this court may issue a writ of mandamus to vacate the order or decree entered by the district judge and directing him, or such other judges as may entertain the proceedings, call to his aid two other judges for the hearing and determination of the application for an interlocutory injunction."

Mr. WALLACE. I believe that is the answer to your specific question.

The COURT. That in either way, either side can go to the Circuit Court for a writ of mandate. In the event I decline the injunction on the ground I do not have jurisdiction to entertain it——

Mr. WALLACE. We have the right, though we believe it would be futile factually, to bring mandate to compel you to act upon the matter one way or the other.

1295 Mr. SILVERMAN. That is all that would be necessary then, isn't it, your Honor?

The COURT. What?

Mr. SILVERMAN. A mandate compelling you to act if you refused jurisdiction and the upper court decided that you had jurisdiction.

The COURT. Then it would be necessary for me to entertain it.

Mr. SILVERMAN. That is right.

The COURT. And decide it.

Mr. SILVERMAN. That is right.

The COURT. And either grant it or refuse it.

Mr. SILVERMAN. That is right.

Mr. WALLACE. And on the contrary, should you assume your jurisdiction and the Government contend that you are in excess of your jurisdiction, mandate will lie to compel the recall of your order.

The COURT. Who besides myself wants to eat lunch? You can come back here at 3:00 o'clock, if you wish.

Mr. DOUGHERTY. That mandate would have to go to the Supreme Court; however, in the second case.

The COURT. I do not think so under this citation 282 U. S. It says, "This court may issue a writ." I thought it said "the court."

Mr. SILVERMAN. I think that is right. In one
1296 case you go to the Supreme Court and in the other to the Circuit Court of Appeals.

Mr. WALLACE. But in either case the question is reviewable, which is what the Court asked primarily.

The COURT. It is summarily reviewable by a writ of mandate rather than by the slower process of appeal.

Mr. WESTOVER. Of course our position is, your Honor, that the delay incident to obtaining a writ of mandate might be greater than proceeding to simply getting judgment entered upon the opinion heretofore rendered from a factual time.

The COURT. It is here for me to decide. I have to decide if I have jurisdiction. If I decide I do, then I must decide it one way or the other. If I decide I do not, that is the law. I would like to dispose of this today, and I suppose you want to be here, so maybe we can all eat lunch and be back by 3:30.

Mr. WESTOVER. All right.

(Whereupon, at 1:30 o'clock p. m., a recess was taken until 3:30 o'clock p. m. of the same date.)

1297 LOS ANGELES, CALIFORNIA,
September 14, 1946; 3:30 o'clock P. M.

The COURT. I suppose everybody is here, with the same appearances as we had this morning, with the exception that Mr. Bishop is not here.

Mr. WESTOVER. And Mr. Steadman Smith, my associate, is here now.

The COURT. Very well.

Mr. WESTOVER. If your Honor please, might I just take a moment? During the recess we took a pencil and paper and sort of were able to reduce to concrete figures the losses per day occurring, and I find it to be substantially in excess of $1000 a day, by virtue of the purported conservator being in possession.

The COURT. You mean in fees and additional expenses that he is paying out?

Mr. WESTOVER. $425 a day additional expenses, $275 a day loss in interest on the 5 million dollars that is in affidavit form, plus the loss on trust deeds that have been paid off and reduced to lower interest, plus the loss in interest on the 10 million dollar reduction in assets, which would bring it well above the $1000.

I might say also, your Honor, that there seemed to be a little question in your Honor's mind before lunch.

The COURT. There is only one thing wrong with
1298 that statement so far, and that is the word "little."

Mr. WESTOVER. Well, maybe this will reduce even that "little."

In Section 792 of Title 28——

The COURT. I have it here.

Mr. WESTOVER. You found it?

The COURT. Yes, I found it.

Mr. WESTOVER. Very well. Then I won't go into it.

The COURT. Does anyone else have anything to bring up? (No response).

I have been considering this matter, and while you all dropped me in a very deep well. I have not had much time to build much of a ladder to get out, but I have tried to straighten this out with some logic in my mind, good or bad.

The parties have presented a motion for a temporary restraining order and supported it with affidavits which set forth facts tending to show an irreparable injury, that whatever these facts are the gravamen of their motion, that is, the legal basis upon which it is sought, is that Section 5(d) of the Home Loan Act is unconstitutional and has been held to be such by a three-judge court convened under Section 280, Title 28, U. S. C.

The defendants, the Government officers and agencies, maintain that this Court has now no jurisdiction to hear
or decide the motion. The basis of this contention
1299 is, first, that under Section 380(a) it is provided that at any time before the hearing and determination of the application the judge to whom the application is made may grant a temporary restraining order if of the opinion that irreparable loss or damage would result

to the petitioner unless a temporary restraining order was granted.

Secondly, that the three-judge court having been convened, a one-judge court has lost the power to act.

If the legal question involved here is the same legal question as the one involved in the three-judge court, then I think the defendants' contention is correct. If it is a new and different question, then the power I think exists in a one-judge court to issue the temporary restraining order.

Entirely apart from any question of irreparable damage or injury as shown by the facts in the various affidavits, or other considerations of equity, the legal question posed by this application for a temporary restraining order now before me is the identical legal question which was proposed before the three-judge court on the motion for a restraining order and on the defendants' motion to dismiss; that is, the powers, if any, constitutionally given to the home loan officials, whoever they might be, under Section 5 (d).

If the conservator is lawfully in possession, then his acts, even if they result from bad judgment, are not subject to review or control by this court merely
1300 because they are bad. That question as to whether his acts are otherwise in violation of any law is not raised by this motion.

I do not think, therefore, that there is a new question raised on the motion, a new question of law or a different question of law.

Under Section 792 of Title 28 a one-judge court is prohibited from hearing and determining "any application for, or vacation of, an interlocutory injunction, or dismiss the action, or enter a summary or final judgment on all or any part of the action * * *"

The way I read that section, it prohibits a one-judge court from modifying an injunction which might have been previously made by the three-judge court. And while the opinion of the three-judge court has been filed, the final injunction—when I say "final" I mean in the sense that it is final as far as the three-judge court is concerned—has not been signed or filed.

Some suggestion has been made that a power exists in

a one-judge court before the determination of the application and that perhaps it has already been determined by the three-judge court. In that connection, I think that determination as used in the statute means the making of an order, a judgment or a decree from which an appeal can be taken. It is true a decision has been made by the three-judge court, but as indicated
1301 therein, findings of fact, conclusions of law and a judgment were to be prepared and submitted and thereafter to be signed and entered, which would pose the question for review by a higher court. I think that as used in the statute, "hearing and determination" means that the hearing is going on until there is a final order or judgment or decree from which an appeal can be made.

I have come to the conclusion that I am without power and jurisdiction to consider and pass upon the motion, and for that reason, and that reason only, it will be denied.

Mr. WESTOVER. May we at this time then, your Honor, request that our motion for a preliminary injunction before the three-judge court, that that time be fixed?

The COURT. I have tried to indicate that I think that whatever is posed by that was also posed by the previous motion to dismiss, if it was not posed by the motion for a preliminary injunction, and the motion to dismiss was argued and the opinion covered that.

Mr. WESTOVER. Then just as your Honor very rightly pointed out before lunch, is to have the matter in position as far as the record is concerned in case we should decide to seek some remedy.

The COURT. I hope you do decide to seek a writ of mandate, maybe both sides.

Mr. WESTOVER. In that event, your Honor, do I under-
1302 stand your decision at this time to be that you decline to permit the filing, let us put it, of the application for a preliminary injunction and to set it for hearing so that we will have a question at issue?

The COURT. All of the papers which you have submitted are filed. You submitted them for filing and they are filed. I am declining to act upon your motion for a temporary restraining order on the grounds which I have

assigned. It seems to me that consistent with those grounds I must also decline to convene a three-judge court, because I have held that it is not a new question, that the basic legal question involved is the constitutionality and validity of Section 5 (d), namely, the entire procedure of the appointment of a conservator and his powers to act.

Mr. WESTOVER. Therefore we have no date.

The COURT. You have a remedy, which is to go to the Circuit Court of Appeals and get a writ of mandate to compel me, either to convene a three-judge court or to issue the injunction.

Mr. WESTOVER. That is what I wanted to make sure that I clearly understood.

The COURT. I have indicated that I have no power or jurisdiction at this stage of the proceeding to do either.

Mr. WESTOVER. Can your Honor give us any suggestion as to when we can anticipate the settling and finding of the judgment under the former opinion of the
1303 former motion, or is that within the realm of speculation?

The COURT. It is mostly within the realm of speculation. However, just as soon as the parties get their objections on file it is my expectation and purpose to communicate immediately by telephone to both Judge Orr and Judge Ling and see what their convenience is for a consultation or for a hearing before the parties.

Now if it is done early next week—I don't know what their convenience is, or where they are or when they will be any place. Judge Ling was here all summer and it may be difficult for him now to get away. But I do want to get it done as promptly as possible out of justice to all of the parties so that the matter can be gotten on its way, if it is going to the Supreme Court for consideration and determination. I also want to get it out of the way for another consideration, which is that I may be leaving the country very shortly in connection with some judicial assignments which will take me out of the United States for some time.

Mr. WESTOVER. Obviously I realize that your Honor can't fix dates. That will be one of our determinations that we will have to make.

The COURT. Has anybody else anything to say about this case?

Mr. DOUGHERTY. I only want to repeat what I said before, that we will have our objections filed not
1304 later than Thursday.

The COURT. Very well. I am sorry I have not been able to extend my remarks on this but I think you have the essential elements. It is a matter concerning which there seems to be no precedent, and for that reason I do hope that the parties will promptly seek a writ of mandate in order that it can be determined.

Mr. WESTOVER. Thank you, your Honor, very much for giving up your Saturday time.

(Whereupon, at 3:45 o'clock p. m., the hearing was adjourned.)

1305 [Reporter's certificate to foregoing transcript omitted in printing.]

1306 [Clerk's certificate to foregoing transcript omitted in printing.]

1316 In the Supreme Court of the United States
No. 687
October Term, 1946

Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof
Filed Nov. 25, 1946

1. Come now the appellants in the above entitled cause and for their statement of points upon which they intend to rely on their appeal to this Court adopt the points contained in their assignment of errors heretofore filed herein.

2. The following portions of the record are necessary for the consideration of the foregoing points and are designated for printing by the Clerk of this Court:

Title	Transcript pages
Complaint	33-51
Motion for Temporary Restraining order	73-74
Affidavit of Paul Mallonee	75-78
Restraining Order	79-80
Answer and Cross-claim	86-97
Motion for Order on Absent Defendants	106-107
Affidavit of Wycoff Westover	108-109

Title	Transcript pages
Order for Service	110–111
Return of Service Thereon	112
Motion for Order on Absent Defendants	115–117
Affidavit of H. O. Wallace	118–120
Order for Service	121–122
Return of Service Thereon	123
Answer and Cross Claim	125–136
Return of Service of Alias Summons	144
Motion for Preliminary Injunction	155–157
Affidavits of Keith Linden and Ben O. Reddick	158–167
Notice of Motion	169–171
Affidavit of S. I. Bacon	173–175
Motion to Dismiss	181
Affidavit of Harold Lee	182–198
Motion for Preliminary Injunction	209–243
Motion for Preliminary Injunction	253–266
Affidavit of J. Francis Moore	271–287
Order Setting Date for Hearing	377–379
Motion for Temporary Restraining Order	383–391
Restraining Order	393–395
Third Party Complaint	346–357
Answer and Cross-Claim	295–340
Motion to Dismiss	439
Motion to Dismiss	442
Motion to Dismiss or in lieu to Quash	434–435
Affidavit of Ray E. Dougherty	436
Order Designating Two Additional Judges	519
Affidavit of T. A. Gregory	475–487
Affidavit of S. I. Bacon	510–513
Affidavit of Robert H. Wallis	517
Affidavit of Harold Lee	491–492
Affidavit of A. V. Ammann	502–508
Affidavit of Ray E. Dougherty	494–500
Amendments to Complaint	532–535
Opinion of Court	644–648
Minute Order of Court	649
Objections to Proposed Findings, Conclusions and Decree	725–735
Findings, Conclusions and Decree	826–838
Petition for Appeal	855–857
Assignments of Error	858–861
Order Allowing Appeal	862–864
Transcript of Proceedings Had July 1, 1946 (Only Pages 18, 19, 20 and thru line 12 on page 21)	961–964
Praecipe for Record on Appeal	888–892

This Statement of Points and Designation of Record. Dated this 25th day of November 1946.

George T. Washington,
GEORGE T. WASHINGTON,
Acting Solicitor General.

NOVEMBER 25, 1946.
Service acknowledged this ..... day of ..... 1946.

D. W. O'DOYLE, JR.,
Counsel for appellees.

[File endorsement omitted.]

1320 In the Supreme Court of the United States
October Term, 1946
No. 687

Designation of additional parts of the record which appellees think material
Filed Dec. 5, 1946

Come now the appellees Paul Mallonee, C. H. Newhouse and Winnie Bucklin, et al., Long Beach Federal Savings and Loan Association, Title Service Company and Robert H. Wallis, and under the provisions of Rule 13, Paragraph 9 of the Rules of the Supreme Court of the United States designate additional parts of the record for printing by the Clerk of this Court, which appellees think material to the proper determination of the appeal herein:

Title	Transcript pages
Summons to Ammann—By Marshal	56
Return of Service, Summons, Complaint, Restr. Order, Mo. on U. S. for Fahey & Ammann—By Marshal	57–59
Summons to Fahey	60
Ret. of Service, Summons on Fahey, Unexecuted—By Marshal	61
Summons to Fahey as Chairman F.H.L.B. Board	62
Ret. of Service of Summons on Fahey as Chairman, F.H.L.B. Board	63
Notice of Mo. for Prel. Inj.	70–72
Stipulation for Continuance of Mo. for Temp. Inj. and Order	84–85
Alias Summons on X-Clm of Title Service to Fahey & Ammann	100
Ret. of Service of Above on Attorney General—By U. S. Marshal	101
Ret. of Service of Above on Local U. S. Attorney—By Marshal	102
Order Continuing for Purpose of Setting hearing date on Mo. for Prel. Inj. and Continuing Temp. Restr. Order—By Court	104–105
Add to "Order for Service 110–111" Certificate thereto	112
Alias Summons to Fahey as Chairman and Ret. of Service of Marshall in D. C.	113–114
Sub. Aff. of Ser. of Above	124
Alias Summons of Wallis to Fahey by T. and Ret. of Ser. by Reg. Mail	138–140
Alias Summons on X-Clm of Wallis to Fahey as Chairman—and Ret. of Ser. by Reg. Mail	141–143
Alias Summons on X-Clm of Wallis to Association and Ret. of Ser. on Ammann	145–147
Receipt of Ser. of Above	168
Points and Authorities re above	172
Aff. of Ser. by mail on Fahey of Mo. for Prel. Inj. Take Testimony and Evidence and Statement of Facts, Affs., Etc.	177–178
Order Cont. to 7-1-46 setting Hearing Date on Mo. for Prel. Inj. and Cont. Temp. Restr. Order by Court	200–201
Not. of Mo. for Prel. Inj. re: Admin. Hearing	206–208
Receipt of Ser. of above by T. and U. S. Attorney	244
Aff. of Ser. by Mail of above on Fahey, T. & W. and C.K.C.	245–246
Statement of Title Service re: Prel. Inj., re: Adm. Hearing by T. & W., and Aff. of Ser. by Mail	247–252
Minute Order of 7-1-46	285–290
Mo. to bring in Third Party Defs. (F.H.L.B. of L.A., F.H.L.B. of Portland and F.H.L.B. of S.F.)	291

Title	Transcript pages
Exhibits A. B. & C. to above Referenced	292
Order Bringing in Third Party Defs.	293–294
Receipt of Service of Answer of Assn.	341
Rec. of Ser. of Above by C.K.C., U. S. Atty., T. & W., T. & NeC.	380
Aff. of Ser. by Mail of Above on Fahey	381–382
Rec. of Ser. of Above By U. S. Atty., T.T. & W., C.K.C., NeC.	392
Aff. of Ser. by Mail, Mo. Temp. Restr. Order re: Adm. Hearing and P. & A. and Affs.; and Restr. Order on Fahey	397–398
Comp. in Intervention by Home Inv.	401–409
C.S.C. by Home Inv. re: Execution and Delivery of Reconveyances	419–420
Aff. of Ser. by Mail of Above on all Parties	421–426
Not. of Hearing by 3 judge Ct.	427–429
Aff. of Ser. by Mail of Above on Fahey, Atty. Gen., Ammann, U. S. Atty. T. & W., T., CKC., and NeC.	430–431
Minute Order 7-8-46	445–446
Ans. of Pls. to Intervention of Home Inv. with Rec. of Ser.	453–458
Ans. of Assoc. to Interv. of Home Inv. with Rec. of Ser.	459–466
Ans. of Title Service to Inter. of Home Inv. by T. & W. with Aff. of Ser. by Mail on W.&S. U. S. Atty. CKC, T. Fahey, & NeC.	467–474
Aff. of Gregory, Opp. to Mos. of Fahey & Ammann to Dismiss or Quash by W. & S. with Rec. of Ser.	475–488
Aff. of Wallis re: Residence of Ammann with Rec. of Ser. by U. S. Atty.	518
Minutes of 7-12-46	520–521
Minutes of 7-15-46	522–524
Not. of Hearing by Ct. of 3 Judges By CKC, with Rec. of Ser.	525–529
Aff. of Ser. by Mail of Above on Atty. Gen., U. S. Atty., Fahey	530–531
Rec. of Ser. by CKC, T. & W., T. and U. S. Atty.	536
Aff. of Ser. by Mail Pls., P.&A., Opp. to Mo. to Dismiss and Quash by Fahey and Amends. to Complaint, and P. & A. Reply to Ammann's Imposing Inj. re: Merger	537–538
Minutes of 7-16-46	539–540
Order Extend. Time to Ans. Cross-Clm. Def. Assoc.	544
Order Directing Execution of 174 Reconveyances. With Rec. of Ser.	545–559
Order Extend. Time to Ans. or Plead to X-Clm. of Assoc. Title Service and Wallis	566
Not. of Mo. Permission Suppl. X-Clm. Title Service	567–568
Mo. for Same	569–570
Supp. X-Clm. in interpleader	571–584
Aff. of H. O. Wallace in Support of Above	585–588
Aff. of Roberts in Support of Above	589–592
Proof of Serv. of Above—By T. & W. on Fahey, U. S. Atty.; CKC, W. & S., & T.	593–595

VOLUME III

X-Clm of L.A. Bank with following Exhibits: A. Balance Sheet of L.A. Bank 3-29-46 B. F.H.L.B.A. Bulletin 54 (Records & Files) with Aff. of Mailing to CKC, and Rec. of Ser.	596–623
Aff. for Order Direct. Ser. Outside or by Publication	624–626
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Dated: this 2nd day of December 1946.

WESTOVER & SMITH and
DANIEL W. O'DONOGHUE, JR.,
By Wyckoff Westover,
WYCKOFF WESTOVER,
Attorneys for Appellees Paul Mallonee, C. H. Newhouse and Winnie Bucklin.

THOMAS & WALLACE,
By H. O. Wallace,
H. O. WALLACE,
Attorneys for Appellee Title Service Company.

John Leahy,
By JOHN LEAHY,
Attorney for Appellee Robert H. Wallis.

Charles K. Chapman,
CHARLES K. CHAPMAN,
Attorney for Appellee, Long Beach Federal Savings and Loan Association.

1327 By and through their respective counsel, the undersigned defendant herewith concurs and joins in the foregoing designation of additional parts of the record.

O'MELVENY & MYERS,
By Pierce Works,
PIERCE WORKS and
Richard Fitz Patrick,
RICHARD FITZPATRICK,
Attorneys for Third Party Defendant and Cross-Claimant Federal Home Loan Bank of Los Angeles.

Service of 3 copies of the within designation of additional parts of record acknowledged this 5th day of December, 1946.

GEORGE T. WASHINGTON,
Acting Sol. Gen.
Counsel for Appellants.
For the Attorney General.

1328 Supreme Court of the United States
No. 687—October Term, 1946

Order noting probable jurisdiction
December 9, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] File No. 51,551. Southern California, D. C. U. S. Term No. 687. John H. Fahey and A. V. Ammann, Individually and respectively as Federal Home Loan Bank Commissioner and Conservator for the Long Beach Federal Savings and Loan Association, Appellants, vs. Paul Mallonee, C. H. Newhouse, Winnie Bucklin, et al. Filed November 9, 1946. Term No. 687 O.T. 1946.

U. S. Government Printing Office: 1949—J734575

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Supreme Court, U.S.
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CLERK

No. 687

In the Supreme Court of the United States

OCTOBER TERM, 1946

JOHN H. FAHEY AND A. V. AMMANN, INDIVIDUALLY AND RESPECTIVELY AS FEDERAL HOME LOAN BANK COMMISSIONER AND CONSERVATOR, FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, APPELLANTS

v.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STATEMENT AS TO JURISDICTION

In the District Court of the United States in and for the Southern District of California, Central Division

Civil Action File No. 5421-PH

PAUL MALLONEE, ET AL., PLAINTIFFS

v.

JOHN H. FAHEY, ET AL., DEFENDANTS

JURISDICTIONAL STATEMENT

To the District Court of the United States in and for the Southern District of California, Central Division:

The defendants-appellants, John H. Fahey and A. V. Ammann, individually and respectively as Federal Home Loan Bank Commissioner and as Conservator for the Long Beach Federal Savings and Loan Association, having this day presented their petition for appeal, submit herewith their statement showing the basis of the jurisdiction of the Supreme Court to entertain the appeal in this case in compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, adopted February 13, 1939:

(A) *The Statutory Provision Believed to Sustain the Jurisdiction.*—This appeal is perfected from a final order, judgment or decree which per-

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manently restrains the defendants John H. Fahey and A. V. Ammann from merging or consolidating the Long Beach Federal Savings and Loan Association or commingling its assets with other financial institutions; from holding an administrative hearing and which forthwith removes the said A. V. Ammann as Conservator for the Long Beach Federal Savings and Loan Association and restores the former officers of said Association to full possession of and control of the business of said Association.

The final order, judgment or decree here appealed from was entered in the District Court of the United States for the Southern District of California, Central Division, on the 30th day of September, 1946, by a statutory court consisting of one circuit and two district judges, specially convened under and by virtue of the provisions of Section 3 of the Act of August 24, 1937, 50 Stat. 751 (28 U. S. C. A., section 380 (a)). The said statute provides *inter alia* as follows:

> An appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof within thirty days after the entry of the order, decree, or judgment granting or denying, after notice and hearing, an interlocutory or permanent injunction in such case.

(B) *The statute of the United States involved.*—The statute of the United States, the validity of which is involved herein and the enforcement and operation of which was sought to be enjoined and which was by the Court held unconstitutional, is section 5 (d) of the Home

Owners' Loan Act of 1933, as amended, chapter 64, section 5 (d), 48 Stat. 128 (12 U. S. C. A., section 1464 (d)), which provides as follows:

> The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

(C) *The date of the judgment or decree sought to be reviewed and the date upon which the application for appeal is presented.*—The final order, judgment or decree here sought to be reviewed was entered and spread of record on the 30th day of September 1946.

The petition for appeal herein was presented and filed on the second day of October 1946.

(D) *Statement showing that the nature of the case and of the rulings of the court was such as to bring the case within the jurisdictional provisions relied upon.*—On May 20, 1946, the Federal Home Loan Bank Administration issued its Order No. 5254 appointing A. V. Ammann conservator for the Long Beach Federal Savings and Loan Association, Long Beach, California, on the grounds that it was conducting its business in an unlawful, unauthorized and unsafe manner; that it had a management which was unsafe and unfit to manage a Federal savings and loan association and that it was pursuing a course that was jeopardiz-

ing and injurious to the interests of its members, its creditors and the public. Said order was issued pursuant to rules and regulations of the Federal Home Loan Bank Administration adopted under authority of Section 5 of the Home Owners' Loan Act of 1933, as amended, 48 Stat. 128 (12 U. S. C. A., 1464).

On May 20, 1946, said A. V. Ammann took charge of said Association and since said date has conducted the affairs of said Association, which has continued the normal and usual business of a Federal savings and loan association.

On May 27, 1946, the plaintiffs filed in the United States District Court for the Southern District of California, Central Division, their complaint against these defendants individually and respectively as Federal Home Loan Bank Commissioner and as Conservator for the Long Beach Federal Savings and Loan Association, joining as defendants the Long Beach Federal Savings and Loan Association and others. Asserting that the Acts of Congress under which these defendants were acting were unconstitutional, the complaint prayed that the said A. V. Ammann be removed as conservator; that the officers of the Long Beach Federal Savings and Loan Association be placed in control and possession; that these defendants be ordered to account to the Long Beach Federal Savings and Loan Association; that the defendants be enjoined and restrained from making any transfers, conveyances, mergers or other diversions of the assets of the said Long Beach Federal Savings and Loan Association and that a preliminary injunction be made enjoining and re-

straining them and each of them during the pendency of the action from merging, consolidating, reorganizing or in any other way uniting or commingling the assets, membership shares, members or any other persons or property of the Long Beach Federal Savings and Loan Association nor any part thereof with any other organization, bank, corporation, association or institution. Asserting also that the action sought injunctive relief to restrain the enforcement, operation and execution in whole or in part of Acts of Congress upon the grounds that such Acts or part thereof are repugnant to the Constitution of the United States, the complaint requested the convening of a three judge court pursuant to the provisions of "Section 380 (a), Title 28 of the Federal Judicial Code."

On the same date the plaintiffs filed a motion for a preliminary injunction to restrain such merger and consolidation and on the same date presented a motion for a temporary restraining order to restrain such merger. This was based on the alleged unconstitutionality of the Act. The temporary restraining order issued on the same date.

On June 14, 1946, the defendant Ammann filed a motion to dismiss.

On July 1, 1946, the plaintiffs filed their motion for a temporary injunction to restrain the holding of an administrative hearing, which administrative hearing had been theretofore, to wit: on the 5th day of June 1946, by Order No. 5309, ordered by the Federal Home Loan Bank Administration pursuant to the demand of the Long Beach Federal Savings and Loan Association,

made on the 30th day of May 1946, all in accordance with the duly adopted rules and regulations of the Federal Home Loan Bank Administration. This motion was based on the alleged unconstitutionality of the Act.

On the said first day of July 1946, plaintiffs also presented to the Court their motion for a temporary restraining order to restrain the holding of said administrative hearing, which motion was by the court granted and the order issued.

On July 1, 1946, the Judge of the District Court entered an order setting the 15th day of July 1946, for hearing by a court composed of three judges the following:

> Motion for preliminary injunction Re: restraining the defendants from merging the said Long Beach Federal Savings and Loan Association.
>
> Plaintiff's motion for preliminary injunction to restrain the holding of an administrative hearing, "together with all other motions in this matter remaining unheard and undecided which have heretofore been noticed for July 1, 1946."

On the 15th day of July 1946 a three judge court, consisting of one circuit judge and two district judges, convened and upon the calling of this case made the following ruling:

> In order that there be no confusion, so counsel will know exactly what they have to follow, we rule now we will not consider any question presented other than on the constitutionality of the statute under question.

Thereupon the plaintiffs, the cross claimants in interpleader and defendant, Ammann, thas

limited by the court, made their arguments upon plaintiffs' motion for preliminary injunctions and upon defendant Ammann's motion to dismiss, only upon the constitutionality of the Home Owners' Loan Act of 1933, as amended. No other hearing was held by the three judge court.

On September 5, 1946, there was filed the opinion of the three judge court holding Section 5 (d) of the Home Owners' Loan Act of 1933, as amended, unconstitutional and void as an unlawful delegation of legislative authority, and that the statute itself must provide for notice and hearing. The court entered a final decree which permanently restrains the defendants John H. Fahey and A. V. Ammann from merging or consolidating the Long Beach Federal Savings and Loan Association or commingling its assets with other financial institutions; from holding an administrative hearing and which forthwith removes the said A. V. Ammann as Conservator for the Long Beach Federal Savings and Loan Association and restores the former officers of said Association to full possession of and control of the business of said Association.

Substantial questions are involved in that the lower court has declared unconstitutional a provision of a statute whereby Congress has delegated to a public board certain regulatory authority over Federal savings and loan associations, which are Federal instrumentalities and quasi public institutions.

No other material hearings or trials have been held whatsoever.

Attached hereto are copies of the opinion of the three-judge court holding Section 5 (d) of the

Home Owners' Loan Act of 1933, as amended, unconstitutional, and copy of the findings, conclusions of law and decree of the three-judge court.

The effect of the decree is summarily to grant to the plaintiffs, upon an application for a preliminary injunction, the full, complete, ultimate and final remedies sought in the entire action, without affording the defendants an opportunity to present any defense.

(E) *Cases believed to sustain the jurisdiction.*—The following decisions are believed to sustain the jurisdiction of the Supreme Court of the United States:

Mayo, Commissioner v. *Lakeland Highlands Canning Co.*, 309 U. S. 310.

Oklahoma, ex rel Phillips, Governor, v. *Guy F. Atkinson, et al.*, 313 U. S. 508.

Dated: October 2, 1946.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General,
JAMES M. CARTER,
United States Attorney,
Ronald Walker
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association, and John H. Fahey individually and as Federal Home Loan Bank Commissioner.

In the District Court of the United States for the Southern District of California, Central Division

Civil Action No. 5421-P. H.

PAUL MALLONEE, ET AL., PLAINTIFFS,

v.

JOHN H. FAHEY, ET AL., DEFENDANTS

HOME INVESTMENT COMPANY OF LONG BEACH, A CORPORATION, INTERVENOR

v.

PAUL MALLONEE, ET AL., AND JOHN H. FAHEY, ET AL., DEFENDANTS IN INTERVENTION

THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, DEFENDANT AND THIRD PARTY PLAINTIFF

v.

FEDERAL HOME LOAN BANK, ET AL., THIRD PARTY DEFENDANTS

ROBERT H. WALLIS, DEFENDANT AND THIRD PARTY DEFENDANT

v.

JOHN H. FAHEY, ET AL., THIRD PARTY DEFENDANTS

TITLE SERVICE COMPANY, A CORPORATION, DEFENDANT AND THIRD PARTY PLAINTIFF

v.

JOHN H. FAHEY, THIRD PARTY DEFENDANT

Before ORR, Circuit Judge, and HALL and LINO, District Judges

ORR, *Circuit Judge:* The Long Beach Federal Savings and Loan Association was organized in 1934 under the Federal Home Loan Bank Act as amended. At the time of its incorporation its assets had a value of approximately $7,500. It has had the same president and board of directors during the ensuing years under whose management and guidance the institution has expanded to a point where, at the time of the seizure hereinafter referred to, its assets were of a value of approximately $26,000,000. It was at the time of seizure entirely solvent, with assets, in addition to an amount sufficient to pay its obligations, in the form of reserves and undivided profits in the sum of $1,300,000.

On May 20, 1946, A. V. Ammann, by virtue of his appointment as a conservator for said institution by John H. Fahey, Administrator, took charge of said institution, and has since been in possession thereof. The conservator took over the Long Beach Federal Savings and Loan Association without notice or hearing of any kind. Subsequent to the taking possession of the bank an administrative hearing was ordered.

Plaintiffs are shareholders in the Long Beach Federal Savings and Loan Association. Several petitions in intervention and third party claims have been filed. All but one of them have joined in the motions of the original plaintiff for injunction.

Temporary orders were issued restraining the merger of the institution with other institutions

of like character and restraining the commissioner from holding an administrative hearing.

At the request of certain of the parties a three-judge court was convened under authority of Sec. 380 (a) of the Judicial Code (28 U. S. C. A. Sec. 380 (a)).

Defendant Ammann has challenged the jurisdiction of the three-judge court to hear and determine the application for the restraining orders on the ground that the provisions of Sec. 380 (a) have no application to the law and the facts as presented by said applications. Defendant Ammann's position is: That the instant proceeding seeks to restrain the operation of rules and regulations promulgated by the Board rather than the enforcement, operation or execution of or setting aside in whole or in part of an act of Congress on the ground that the law itself is unconstitutional.

We think the contention is without merit. Authority to do the acts sought to be restrained, is found to exist, must be bottomed on subsection (d) of Sec. 5[1] of the Federal ome Loan Bank Act, as amended. It is on the direct operation of this statute that the commissioner must rely.

---

[1] 12 S. C. A. Sec. 1464 (d): "(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

Threatened action under the authority of the statute is sought to be restrained on the ground that the statute is unconstitutional and void in that it attempts to confer legislative power on the board. Clearly this proceeding comes within the provisions of Sec. 380 (a) and the question is required to be heard by a three-judge court.

Appellants concentrate their attack on subsections (a) and (d) of Sec. 5 of the Act. It is argued that subsection (d), in attempting to authorize the board to make rules and regulations for the purposes mentioned in said subsection (d) delegates legislative power to the board without prescribing either adequate, or any statement of policy, standards, limitations, or criteria to guide the board in exercising its functions and is contrary to Article I, Section 1, and Article I, Section 8 (paragraph 18), of the Constitution of the United States (U. S. C. A. Constitution, Article I, Sec. 8; Clause 18).

It is agreed that functions of the legislature may not be delegated by the Congress to any executive or executive department; hence, there is posed a single question for determination, to wit: Has the Congress made such a delegation in the sections of the Act under consideration? Fortunately the course to be followed in determining questions of this character has been well chartered by the Supreme Court of the United States. We have but to endeavor to make the proper application of the principles by said court enunciated to the conditions existing in the matter before us. We refer particularly to *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, and *Schechter* v. *U. S.*, 295 U. S. 495. We look to the statute to see whether

the Congress has declared a policy with respect to the providing of rules and regulations for the reorganization, consolidation, merger, or liquidation of Federal savings and loan associations, including the power to appoint a conservator or receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital stock of the same; and to release any such association from such control and permit its further operation; "Whether the Congress has set up a standard for the president's (board's) action; whether the Congress has required any finding by the president (board) in the exercise of the authority" to do the things enumerated in Sec. 5 (d) of the Act (*Panama Refining Co. v. Ryan, supra*, p. 415). It may be said of Sec. 5 (d), as was said of the section involved in the Panama case, that it is "brief and unambiguous." It makes no attempt to lay down rules for the guidance of the board, nor does it state in what circumstances or under what conditions the board is to merge institutions or appoint a conservator or receiver. It establishes no criterion to govern the board's course. It does not require any finding by the board as a condition of its action. No policy is declared by Congress as to merger or appointment of conservator. The Section gives to the Board unlimited authority to formulate rules for the board's action in the respects mentioned and to do so as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to govern itself. We are unable to find

in the Act a declaration of policy or standard of action which can be deemed to relate to the subject of section 5 (d).

The Los Angeles Bank, with assets of $43,000,000 was merged with a Portland bank and later both with a bank in San Francisco. While the legality of this merger is not before us we consider it because the aim of a statute may be learned "both from its terms and from the administrative practice under it" (*Schechter* v. *U. S., supra*). The merger was made without notice or hearing of any character. In fact, none is required by the statute, and herein lies a fatal defect as to its constitutionality.[2] We think due process requires a hearing on notice and this should be provided within the Act itself.

Comparison of the Home Owners Loan Act of 1933, as amended, under consideration here, with other acts of Congress which have been held unconstitutional because of improper delegation of legislative power, demonstrates that said Home Owners Loan Act fails to set [redacted] as comprehensive and definite statements of policy, standards, guides, criteria, and limitations as do those acts.[3]

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[2] *Ohio Valley Water Co.* v. *Ben Avon*, 253 U. S. 287; *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413; *Hovey* v. *Elliott*, 167 U. S. 409; See also, *Boeing Air Transi* v. *Farley*, 75 F. 2d. 765.

[3] National Industrial Recovery Act: *Panama Refining Co.* v. *Ryan*, 293 U. S. 388; *Schechter Poultry Co.* v. *U. S.*, 295 U. S. 495; Bituminous Coal Conservation Act of 1935; *Carter* v. *Carter Coal Co.*, 298 U. S. 238; See also, *Ohio Valley Water Co.* v. *Ben Avon*, 253 U. S. 287.

We hold Sec. 5 (d) of Home Owners Loan Act of 1933, as amended, unconstitutional and void as attempting to delegate legislative power to the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.

Let judgment be entered in accordance with this opinion.

_____,

United States Circuit Judge.

_____,

United States District Judge.

_____,

United States District Judge.

(Endorsed:) Lodged Sept. 12, 1946. Edmund L. Smith, Clerk, by Theodore Hocke, Deputy Clerk.

(Endorsed:) Filed Sept. 30, 1946, at 5 min. past 10 o'clock A. M. Edmund L. Smith, Clerk, by J. M. Horn, Deputy.

In the District Court of the United States for the Southern District of California, Central Division

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Civil File No. 5421-P. H.

PAUL MALDONEE, C. H. NEWHOUSE, AND WINNIE HUCKWIN, INDIVIDUALLY, AND AS REPRESENTATIVES OF A CLASS, SUING FOR AND ON BEHALF OF ALL OF THE SHAREHOLDER MEMBERS OF THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, AN ASSOCIATION, ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE UNITED STATES OF AMERICA, PLAINTIFFS

v.

JOHN H. FAHEY, INDIVIDUALLY, JOHN H. FAHEY, AS CHAIRMAN OF THE FEDERAL HOME LOAN BANK BOARD, A. V. AMMANN, INDIVIDUALLY AND A. V. AMMANN, AS THE PURPORTED CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, TITLE SERVICE COMPANY, SUED HEREIN AS JOHN DOE, ONE (CROSS CLAIMANT IN INTERPLEADER) R. H. WALLIS, SUED HEREIN AS JOHN DOE, TWO (CROSS CLAIMANT IN INTERPLEADER) ET AL., DEFENDANTS.

(1)

SUB NOMINAE

HOME INVESTMENT COMPANY OF LONG BEACH, A CORPORATION, INTERVENER

v.

PAUL MALLONEE, ET AL.; AND JOHN H. FAHEY, ET AL., DEFENDANTS IN INTERVENTION

THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, DEFENDANT AND THIRD PARTY PLAINTIFF

v.

FEDERAL HOME LOAN BANK, ET AL., THIRD PARTY DEFENDANTS

ROBERT H. WALLIS, DEFENDANT AND THIRD PARTY DEFENDANT

v.

JOHN H. FAHEY, ET AL., THIRD PARTY DEFENDANTS

TITLE SERVICE COMPANY, A CORPORATION, DEFENDANT AND THIRD PARTY PLAINTIFF

v.

JOHN H. FAHEY, ET AL., THIRD PARTY DEFENDANTS

FINDINGS, CONCLUSIONS OF LAW, AND DECREE

Various motions came on to be heard on the 15th day of July 1946 at 2:00 o'clock P. M., in courtroom No. 3 of the above entitled Court, situated in the Federal Building, in the City of Los Angeles, State of California, upon the pleadings, notices of motion, affidavits, points and authorities and arguments of counsel, before a Statutory Court convened, pursuant to the provisions of Section 380 (a) of Title 28 of U.S.C.A., com-

posed of the Honorable William E. Orr, Judge of the Circuit Court of Appeals of the 9th Circuit, presiding, Judge David W. Ling, Judge of the District Court for the District of Arizona, and Judge Peirson M. Hall, Judge of the District Court for the Southern District of California.

Appearing as counsel for the various parties were:

Messrs. Wyckoff Westover and Steadman G. Smith, of the firm of Westover & Smith, Attorneys for the Plaintiffs;

James Carter, Esquire, United States Attorney at Los Angeles, by Rolland L. Walker, Esquire, Assistant United States Attorney, and Moe Silverman, Esquire, of the Nebraska Bar, Associate Counsel, representing the defendant A. V. Ammann, individually, and as conservator of the Long Beach Federal Savings and Loan Association, and the defendant John H. Fahey, specially, for the limited purpose only of making a motion to dismiss and to quash service of process upon defendant John H. Fahey;

Charles K. Chapman, Esquire, appearing for the defendant and cross claimant Long Beach Federal Savings and Loan Association;

H. O. Wallace, Esquire, of the firm of Thomas & Wallace, appearing as Attorneys for the defendant and cross claimant in interpleader Title Service Company, a corporation; and

Raymond Tremaine, Esquire, appearing as Attorney for the defendant and cross claimant in interpleader Robert H. Wallis.

The following motions were duly called for hearing and were argued by counsel for the respective parties, to wit:

1. Motions of the plaintiffs to continue in force, the Temporary Restraining Orders to restrain the merging of the said Long Beach Federal Savings and Loan Association with any other institutions, and to restrain the holding of an Administrative Hearing by the Federal Home Loan Bank Board or Administration, until the final adjudication and determination of the Plaintiffs' Motions for Preliminary Injunctions.

2. Motion of the defendant A. V. Ammann, individually, and as Conservator of the Long Beach Federal Savings and Loan Association to Dismiss the Complaint.

3. Motion of the defendant A. V. Ammann, individually, and as Conservator of the Long Beach Federal Savings and Loan Association, to Dismiss the Answer and Cross Claim in Interpleader of the defendant Title Service Company, a corporation.

4. Motion of the defendant A. V. Ammann, individually, and as Conservator of the Long Beach Federal Savings and Loan Association to Dismiss the Answer and Cross Claim in Interpleader of the defendant Robert H. Wallis.

5. Motion of the defendant John H. Fahey, individually, and as Chairman of the Federal Home Loan Bank Board, appearing specially, to Dismiss the Complaint, or in lieu thereof to Quash Service of Summons upon defendant John H. Fahey, individually, and as Federal Home Loan Bank Commissioner.

6. Motion of the plaintiffs for Preliminary Injunction to restrain the defendants John H. Fahey and A. V. Ammann individually and in

their representative capacities, from merging or consolidating Long Beach Federal Savings and Loan Association, or commingling its assets with other institutions, and to take testimony and evidence at the hearing thereof.

7. Motion of the plaintiffs for preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Administration or any other persons.

Counsel for plaintiffs presented a written motion to amend the Complaint in certain particulars, and leave of Court being first had and obtained, the same was allowed to be filed and there being no objection to said motion, the motion to amend was granted by the Court, and the Complaint so amended.

The Court next considered the matter of the plaintiffs' motions to continue in force the temporary restraining orders to restrain the merging of the said Long Beach Federal Savings and Loan Association with any other institutions, and to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, until the determination on the Plaintiffs' Motions for preliminary injunctions, and the Court thereupon granted both of said motions and continued the same in full force and effect until the determination by this three-judge Court re the question of constitutionality at issue herein.

The motions of the plaintiffs and of the defendant Long Beach Federal Savings and Loan Association to take oral testimony and evidence at the hearing on the Plaintiffs' motions for preliminary injunctions were both denied by the Court.

At the close of oral arguments by counsel representing the respective parties, on the 16th day of July 1946, the Court requested counsel for the respective parties to submit within five (5) days a compilation of their points and authorities on the sole question of the unconstitutionality of Paragraphs (a) and (d) of Section 5 of the Home Owners Loan Act of 1933, as amended; the said compilations of points and authorities, having been filed within the time allowed by the Court by counsel for all parties, and the Court, having considered the same together with the motion, affidavits, pleadings, and arguments, previously presented, now makes its findings as follows, to wit:

FINDINGS

I

The Long Beach Federal Savings and Loan Association was organized in 1934 under the Federal Home Loan Bank Act as amended. At the time of its incorporation its assets had a value of approximately $7,500.00. It has had the same president and board of directors during the ensuing years under whose management and guidance the institution has expanded to a point where, at the time of the seizure hereinafter referred to, its assets were of a value of approximately $26,000,000.00. It was at the time of seizure entirely solvent, with assets, in addition to an amount sufficient to pay its obligations, in the form of reserves and undivided profits in the sum of $1,300,000.00.

II

On May 20, 1946, A. V. Ammann, by virtue of his appointment as a conservator for said institution by John H. Fahey, Administrator, took charge of said institution, and has since been, and now is, in possession thereof. The conservator took over the Long Beach Federal Savings and Loan Association without notice or hearing of any kind. Subsequent to the taking possession of the bank an administrative hearing was ordered.

III

Plaintiffs are shareholders in the Long Beach Federal Savings and Loan Association and are suing as representatives of all members of that class.

IV

Temporary orders were issued restraining the merger of the institution with other institutions of like character and restraining the commissioner from holding an administrative hearing.

V

That prior to said seizure no demand was made upon said Long Beach Federal Savings and Loan Association, its officers or directors, for the correction of, or change in any of its policies, actions, procedures, or doings of any kind or nature. That there was no official criticism of said Long Beach Federal Savings and Loan Association, or any of its officers, directed to it.

VI

That prior to said seizure no notice was given to defendant Long Beach Federal Savings and Loan Association of any hearing of any kind or nature and the said Long Beach Federal Savings and Loan Association was afforded no opportunity to be heard by defendant John H. Fahey as Federal Home Loan Bank Commissioner, or by any of his assistants, agents, servants or employees, or at all.

VII

That Order No. 5254, dated May 20, 1946, purporting to appoint defendant A. V. Ammann to act as the Conservator of Long Beach Federal Savings and Loan Association and all acts taken by defendant A. V. Ammann, subsequent thereto, were done and made by defendant, A. V. Ammann, or under his direction or control, without any authority whatsoever, excepting only such as might claim to be derived from rules and regulations promulgated by said defendant John H. Fahey, under claim of color of authority to make such rules and regulations, pursuant to the rule making authority purportedly delegated by provision of subdivision (d) of Section 5 of Home Owners Loan Act of 1933, as amended.

VIII

That the defendant John H. Fahey has been duly and regularly served with process, both individually, and in his representative capacity as Federal Home Loan Bank Commissioner.

From the foregoing facts the Court concludes:

CONCLUSIONS OF LAW

1. That Section 5 (d) of the Home Owners Loan Act of 1933 as amended is unconstitutional in that it is repugnant to Article I, Section 1, and Article I, Section 8, Clause 18 and Amendments Nos. IV and V of the Constitution of the United States of America.

2. That the motion of the defendant A. V. Ammann, both individually, and as conservator of the Long Beach Federal Savings and Loan Association to dismiss the complaint and to dismiss the answers and cross claims in interpleader of the defendant Title Service Company, a corporation, and the defendant Robert H. Wallis should be denied; and

3. That this Court has acquired jurisdiction over the defendant John H. Fahey, that the motion of the defendant John H. Fahey, individually, and as Federal Home Loan Bank Commissioner to dismiss the Complaint, or in lieu thereof to quash service of summons, should be denied; and

4. That the motions of the plaintiffs for a preliminary injunction to restain the defendant from merging or consolidating the Long Beach Federal Savings and Loan Association, or commingling its assets with other institutions should be granted and made permanent; and

5. That the motions of the plaintiffs and of the defendant and cross claimant in interpleader, Title Service Company, a corporation, and of the defendant and cross claimant in interpleader Robert H. Wallis for a preliminary injunction to

restrain the holding of an administrative hearing by the Federal Home Loan Bank Board, or administration should be granted and made permanent; and

6. That the purported appointment of the defendant A. V. Ammann to act as Conservator for the Long Beach Federal Savings and Loan Association was, and is wholly illegal, null and void, and that all acts done and actions taken by him, as such purported Conservator, are void ab initio and of no force or effect.

DECREE

Now therefore, it is hereby Ordered, Adjudged, and Decreed:

1. That the motion of the defendant A. V. Ammann, both individually and as Conservator for the defendant Long Beach Federal Savings and Loan Association to dismiss this action be, and the same is hereby denied.

2. That the motion of the defendant A. V. Ammann, both individually, and as Conservator for the defendant Long Beach Federal Savings and Loan Association to dismiss the answer and cross claim in interpleader of the defendant Title Service Company, a corporation, be, and the same is hereby denied.

3. That the motion of the defendant A. V. Ammann, both individually, and as Conservator for the defendant Long Beach Federal Savings and Loan Association to dismiss the answer and cross claim in interpleader of the defendant Robert H. Wallis, be, and the same is hereby denied.

4. That the motion of defendant John H. Fahey, both individually, and as Federal Home Loan Bank Commissioner, and as Chairman of the Federal Home Loan Bank Board, to dismiss, or in lieu thereof, to quash service of summons be, and the same is hereby denied.

5. That the motion of the plaintiffs for a preliminary injunction to restrain the defendants John H. Fahey, individually and as Federal Home Loan Bank Commissioner, and A. V. Ammann, individually and as the purported Conservator for the Long Beach Federal Savings and Loan Association, the assistants, servants, agents, representatives, and employees, from merging or consolidating the Long Beach Federal Savings and Loan Association, or commingling its assets with other financial institutions be, and the same is hereby granted. Said defendants John H. Fahey, individually and as Federal Home Loan Bank Commissioner, and A. V. Ammann, individually and as purported Conservator for the Long Beach Federal Savings and Loan Association, their assistants, servants, agents, representatives, and employees, and each of them are hereby permanently restrained and enjoined from making, attempting to make, or instituting any merger, consolidation or reorganization of said Long Beach Federal Savings and Loan Association, and from making any transfers, assignments, conveyances, of any and all of the assets thereof, which might affect or bring about such merger, consolidation and/or reorganization, and from and, of uniting, commingling, joining, or consolidating the securities, assets, cash, resources, property,

membership shares of said association with those of any other association, bank, corporation, organization, or institution whatsoever.

6. That the motions of the plaintiffs and of the defendants and cross claimant in interpleader Title Service Company, and of the defendant and cross claimant in interpleader Robert H. Wallis for preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, or any other person be, and the same is hereby granted, and a permanent injunction be, and the same is hereby granted and the defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as the Commissioner thereof, or otherwise, and A. V. Ammann, individually, A. V. Ammann, as purported Conservator of the Long Beach Federal Savings and Loan Association or otherwise, and any and all of their agents, employees, servants, conservators, hearing officers and subordinates, each, and all of them, be and they hereby are, restrained and enjoined from directly or indirectly holding any administrative hearing, or proceeding with, the holding or attempting to hold, any hearing, or hearings, pursuant to Order No. 5309 of the Federal Home Loan Bank Administration, or at all.

7. That the defendant A. V. Ammann, both individually, and as purported Conservator of the Long Beach Federal Savings and Loan Association be and he is hereby removed forthwith as such purported Conservator.

8. That the said officers of the Long Beach Federal Savings and Loan Association be forthwith restored to, and placed in full possession of, and control of the business and all of the business of said Association, and that the said defendants John H. Fahey, A. V. Ammann and their subordinates, agents, employees and servants be, and they are hereby ordered to forthwith deliver, return, relinquish, assign, transfer, convey, quitclaim, surrender and set over to said officers, title control and possession of any and all property of every kind and nature, wheresoever situated, owned by the Long Beach Federal Savings and Loan Association, on or after May 20, 1946, or pertaining to the operation of said Association by said persons thereafter, including all books, records, reports, accounts and other documents, and unless possession of the Long Beach Federal Savings and Loan Association, as aforesaid, upon service of a copy of this decree upon defendant A. V. Ammann, either personally or upon his servant, agent or representative in possession, is forthwith delivered, as aforesaid, let a writ of assistance and possession issue placing the officers of the Long Beach Federal Savings and Loan Association in peaceable and complete possession of the assets, property and business of said Long Beach Federal Savings and Loan Association.

9. That the defendants, A. V. Ammann and John H. Fahey, both individually, and in their representative capacities, are ordered to forthwith render an inventory to the Long Beach Federal Savings and Loan Association and its officers and directors of all property, assets, securities,

cash, instruments, documents, records, and effects, pertaining to or taken from the possession of the said Long Beach Federal Savings and Loan Association, or received by said defendants on or subsequent to May 20, 1946, and the said defendants, and each of them, are further hereby ordered to render, within ten days from the date hereof, their verified account in accordance with rules of sound accounting practice, to this Court, of all monies and income of all kinds received by them, or either of them, and for all acts and transactions done by them, or either of them, while acting as the alleged or purported Conservator or Conservators of said Long Beach Federal Savings and Loan Association, together with interest on all such sums of money so received, and together with a detailed and complete report of any and all transactions had, or done by them as such purported Conservator or Conservators of said Association, on and since May 20, 1946, and that they are further ordered to deliver forthwith to said Long Beach Federal Savings and Loan Association and its officers all such property, stock, bonds, notes and other personal property and such sums of money as they may have received during said period of time, less only such disbursements as the Court shall have found to have been properly made by them, if any.

10. That neither the defendant A. V. Ammann, nor the defendant John H. Fahey in their representative capacities have had any right, title or interest, or claim to any of the properties herein mentioned, or to the properties heretofore inter-

plead and deposited with the Clerk of this Court by the defendants and cross claimants in interpleader. The defendants A. V. Ammann and John H. Fahey in their representative capacities are hereby permanently enjoined from ever asserting any claims, right, title or interest in or to said property, or any of it.

11. That the defendants A. V. Ammann and John H. Fahey are hereby further ordered, within ten days from the date hereof, to produce and deposit with the Clerk of this Court, the said Conservator's bond of the defendant A. V. Ammann, and that the said bond shall remain in full force and effect until further order of this Court.

12. That the defendants John H. Fahey and A. V. Ammann are hereby ordered to do and perform such acts as are necessary or expedient to carry out the provisions hereof.

13. That the plaintiffs and the defendants and cross complainant Long Beach Federal Savings and Loan Association, Title Service Company, a corporation, and Robert H. Wallis, recover their costs of suit herein from the defendants A. V. Ammann and the defendant John H. Fahey in the sum of $_____.

14. There is reserved to the District Court the right to make such other and further orders herein as shall hereafter be necessary to determine collateral issues hereto and to give to this Decree full force and effect.

Dated: At Los Angeles, this 30th day of September 1946, 10 o'clock A. M.

Judgment entered in Civ. Doc. 10:05 A. M. Docketed Sept. 30, 1946. C. O. Book 40, Pages 86–98. Edmund L. Smith, Clerk, by J. M. Horn, Deputy.

Wm. E. Orr,
WILLIAM E. ORR,
Judge of the Circuit Court of Appeals.

David W. Ling,
DAVID W. LING,
Judge of the District Court of the United States.

Peirson M. Hall,
PEIRSON M. HALL,
Judge of the District Court of the United States.

Approved as to form: September —, 194 James M. Carter, United States Attorney; by Rolland Walker, Asst. United States Attorney, Attorneys for Defendants, A. V. Ammann and John H. Fahey.

Approved as to form: September 11, 1946. By Charles K. Chapman, Attorney for Defendant, Long Beach Federal Savings and Loan Association.

Approved as to form: September 11, 1946. Thomas & Wallace, By H. O. Wallace, Attorneys for Defendant, Title Service Company.

Approved as to form: September 11, 1946. By Raymond Tremaine, Attorney for Defendant, Robert H. Wallis.

Approved as to form: September 11, 1946. O'Melveney & Myers, By Jackson B. Chance,

Richard Fitzpatrick, Attorneys for the Third Party Defendant, Federal Home Loan Bank of Los Angeles.

Approved as to form: September 11, 1946. Westover & Smith, By Wyckoff Westover, Attorneys for Plaintiffs.

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CHARLES ELMORE CROPLEY

No. 687

In the Supreme Court of the United States

OCTOBER TERM, 1946

JOHN H. FAHEY AND A. V. AMMANN, INDIVIDUALLY AND RESPECTIVELY AS FEDERAL HOME LOAN BANK COMMISSIONER AND CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, APPELLANTS

v.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR APPELLANTS

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 687

JOHN H. FAHEY AND A. V. AMMANN, INDIVIDUALLY AND RESPECTIVELY AS FEDERAL HOME LOAN BANK COMMISSIONER AND CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, APPELLANTS

v.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the District Court of the United States for the Southern District of California (R. 374–378) is reported in 68 Fed. Supp. 418.

JURISDICTION

The judgment of the district court was entered on September 30, 1946 (R. 490–500). The petition for appeal was presented on October 2, 1946

(R. 506–507) and allowed on October 3, 1946 (R. 511–512). The case was docketed in this Court on November 9, 1946. On December 9, 1946, this Court noted probable jurisdiction of the case (R. 766). The jurisdiction of this Court rests upon Sections 2 and 3 of the Act of August 24, 1937, c. 754, 50 Stat. 751, 28 U. S. C. 349a, 380a.

QUESTIONS PRESENTED

1. Whether Section 5 (d) of the Home Owners' Loan Act of 1933 improperly delegates legislative power, and is therefore unconstitutional.

2. Whether a Federal savings and loan association organized under Section 5 of the Home Owners' Loan Act, and shareholders thereof suing derivatively, are estopped from attacking the constitutionality of Section 5 (d) of that Act.

3. Whether a Federal savings and loan association, and its shareholders, suing to oust a conservator appointed pursuant to Section 5 (d) of the Home Owners' Loan Act, must pursue their administrative remedies before seeking judicial relief.

4. Whether Section 57 of the Judicial Code, 28 U. S. C. 118, authorizes out-of-state service in a suit on behalf of a Federal savings and loan association, located within the district, to oust a conservator appointed pursuant to Section 5 (d) of the Home Owners' Loan Act, and, if so, whether Section 57 authorizes the issuance of

personal orders, injunctions, and decrees against a defendant served outside the State, and not appearing in the action.

5. Whether the Commissioner of the Federal Home Loan Bank Administration is an indispensable party defendant to an action to oust a conservator appointed pursuant to Section 5 (d) of the Home Owners' Loan Act, on the ground that the section is unconstitutional.[1]

6. Whether a district court may properly enter a contested final judgment, granting all relief prayed for by plaintiffs, before defendants' time to answer has expired, without granting defendants an opportunity to present all of their defenses, and in the absence of any motion for final judgment or relief.[1]

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128, 12 U. S. C. 1461, 1464, of the Federal Home Loan Bank Act, c. 522, 47 Stat. 725, 12 U. S. C. 1421; and of the

[1] Subsidiary questions presented are:

7. Whether Section 5 (d) of the Home Owners' Loan Act is unconstitutional because it does not provide, on its face, for an administrative hearing before appointment of a conservator.

8. Whether the Title Service Company's and Wallis' cross-claims in interpleader were properly pleadable under the Federal interpleader provisions.

9. Whether the District Court erred in granting leave to the Long Beach Federal Savings and Loan Association to file a third-party complaint against the Federal Home Loan Banks of Portland, Los Angeles, and San Francisco.

National Housing Act, c. 847, 48 Stat. 1246, 12 U. S. C. 1701 are set forth in Appendix A, *infra*, pp. 103–111. Pertinent provisions of the Rules and Regulations issued pursuant to Section 5 of the Home Owners' Loan Act are also set forth in Appendix A, *infra*, pp. 111–116.

STATEMENT

This appeal is from a judgment of a specially constituted three-judge court, convened pursuant to Section 3 of the Act of August 24, 1937, 28 U. S. C. 380a, holding Section 5 (d) of the Home Owners' Loan Act unconstitutional, enjoining appellants from continuing the conservatorship of Long Beach Federal Savings and Loan Association established pursuant to that section, and restoring the Association to its former management.

The undisputed facts relevant on this appeal, are as follows:[2]

[2] The case was heard and decided by the lower court only on (a) appellant Ammann's motions to dismiss the complaint and cross-complaints for failure to state a cause of action and for lack of an indispensable party, (b) appellant Fahey's motion to dismiss for lack of jurisdiction and service, and (c) appellees' motions for *preliminary* injunctions restraining merger of the Long Beach Federal Savings and Loan Association and restraining the holding of an administrative hearing, and accompanying affidavits. Nevertheless, as will appear, *infra*, pp. 14–15, 90–95, the District Court granted final judgment and all relief prayed for in the complaint and cross-complaints. In our view, the record to be considered by this Court consists primarily of the pleadings (R. 1–17, 30–39, 54–63, 181–232, 312–315), the motions before the District Court and accompanying affidavits (R. 21–23, 67–81, 82–

In 1934, on application of its organizers, the Long Beach Federal Savings and Loan Association (hereinafter referred to as the Association or Long Beach) was chartered by the Federal Home Loan Bank Board under rules and regulations adopted pursuant to authority granted in Section 5 of the Home Owners' Loan Act of 1933, as amended (R. 140–141). The original charter provided that the Association "shall at all times be subject to the provisions of the Home Owners' Loan Act of 1933, providing for Federal savings and loan associations, and to any amendments thereof, and to valid rules and regulations made thereunder as the same may be amended from time to time," and that it might be "liquidated, merged, consolidated, or reorganized, as is provided in the rules and regulations for Federal savings and loan associations" (R. 141, 160). In 1937, upon the Association's request, an amended charter was issued, which likewise provided that the Association was to exercise its powers subject

96, 98–177, 260–263, 279–304), and the opinion (R. 374–378) and judgment (R. 490–500) of the lower court. Appellees have, however, designated substantially the entire record of the case in the District Court, including such irrelevant matter as motions by appellees which were denied and from which no appeal was taken (R. 379–424), uncontested relief granted to intervenors as to which no question is raised (R. 247–254, 265–278, 305, 319–327), pleadings filed after entry of judgment below and appeal taken (R. 486–489, 512–513, 529–544), and the full transcript of oral argument in the lower court (R. 547–760).

to the Home Owners' Loan Act and regulations issued thereunder (R. 143–144, 164).

On May 20, 1946, acting pursuant to Section 5 and the pertinent rules and regulations, Appendix A, *infra,* pp. 103–108, 111–116, the Federal Home Loan Bank Administration[8] issued its Order No. 5254 appointing A. V. Ammann as Conservator for the Association, on the grounds that it had been determined that the Association was conducting its business in an unlawful, unauthorized and unsafe manner; that it had a management which was unsafe and unfit to manage a Federal savings and loan association; and that it was pursuing a course that was jeopardizing and injurious to the interests of its members, its creditors and the public (R. 83, 85–86, 290–291). On the day of his appointment, the Conservator assumed his duties, and since that time, with the exception of the first two days in October, 1946, he has been charged with the exclusive management of the Association (R. 296, 493).

On May 27, 1946, the plaintiffs below, shareholders in the Association, suing individually and as representatives of all the shareholder members of the Association, brought this action in the

[8] The Federal Home Loan Bank Administration (sometimes referred to herein as the Bank Administration) was vested by Executive Order 9070, Appendix B, *infra*, pp. 117–119, with all the duties, powers and authority of the Federal Home Loan Bank Board, and the Chairman of the Federal Home Loan Bank Board serves as Commissioner of the Federal Home Loan Bank Administration.

United States District Court for the Southern District of California. Named as the principal defendants were A. V. Ammann, individually and as the "purported Conservator" for the Association, and John H. Fahey, individually and as Chairman of the Federal Home Loan Bank Board. Also joined as defendants were the Long Beach Federal Savings and Loan Association itself, and several John Doe defendants. The complaint, as amended (R. 1–17, 312–315), alleged that defendants Fahey and Ammann arbitrarily, unlawfully, without cause and without due process, seized possession and control of the Long Beach Federal Savings and Loan Association and deprived it of all its assets, books, records, etc. (R. 5–6); that said "seizure" was motivated purely and solely by malice and ill will; that none of the acts of Congress under which the defendants were acting provides for any judicial review; that the regulations adopted by the defendants purported to give themselves the authority under which they acted without prior notice or hearing; that said delegation of legislative authority to make and create their own rules and regulations for hearings and "seizures" did not set forth nor prescribe any rules, guides or controls; and that paragraphs (a) and (d) of Section 5 of the Home Owners' Loan Act of 1933, as amended, and the Rules and Regulations promulgated pursuant thereto, are repugnant to the Constitution of the United States and void (R. 11–15, 314–315). The

prayer was that the Conservator be removed; that the officers and directors of the Association be returned to control; that the defendants be required to account to the Association for all monies and income of all kinds received by them during the alleged Conservatorship; that temporary and permanent injunctions issue restraining the defendants from merging the Association with any other; and for declaratory relief (R. 15–17). Alleging also that the enforcement of a law of Congress was sought to be enjoined on the grounds of its repugnancy to the Constitution of the United States, the complaint asked that a three-judge court be convened pursuant to the provisions of Section 3 of the Act of August 24, 1937, 28 U. S. C. 380a (R. 2).

Coincidentally with the filing of the complaint, the plaintiffs filed motions for a preliminary injunction and a temporary restraining order to restrain the defendants from merging the Association with any other association (R. 21–27). The temporary restraining order issued immediately (R. 27–28).

Personal service of the summons was secured upon Ammann (R. 19), but Fahey, being an official inhabitant of the District of Columbia (R. 261), could not be reached in California (R. 20–21). The plaintiff filed a motion, on June 5, for substituted service upon Fahey on the ground that he could not be found within the State of California, and had not appeared voluntarily.

The motion stated that it was made pursuant to the provisions of Judicial Code, Section 57, 28 U. S. C. 118 (R. 43–45). An order issued pursuant to the motion (R. 45), and service of process upon Fahey was made in the District of Columbia (R. 46–48).

On June 4, 1946, Title Service Company, trustee under numerous deeds of trust securing loans made by the Association,[4] filed an answer and cross-claim in interpleader, alleging that it was one of the John Doe defendants, setting up its trusteeship, asserting the unconstitutionality of the Home Owners' Loan Act, and alleging that the defendants Fahey and Ammann had delivered to it 174 notes and deeds of trust, together with instructions to reconvey said property to the trustors. The cross-claim alleged further that the defendant Long Beach Federal Savings and Loan Association (acting through its officers and directors) had notified Title Service Company that the authority of Ammann and Fahey to act for the Association was invalid and unconstitutional, and that the Title Service Company was thereby faced with conflicting demands. The cross-claimant deposited in the registry of the court the 174 deeds of trust, together with the requests for reconveyances, and prayed that the defendants be required to interplead and litigate their conflicting claims to the

[4] The officers and directors of Title Service Company are almost identical with those of the Long Beach Federal Savings and Loan Association (cf. R. 522).

said 174 deeds of trust; that the court determine the respective rights in and to the said notes and deeds of trust; that the Title Service Company be instructed as to its duties and that it be released and discharged from all responsibilities as trustee (R. 30–39).[5]

On June 12, 1946, one Robert H. Wallis filed another answer and cross-claim in interpleader, also stating that he was one of the John Doe defendants (R. 54–63). His cross-claim alleged that he was depositing with the registry of the court a cashier's check in the sum of $50,000; that the check had been received by him as attorney for the Long Beach Federal Savings and Loan Association for attorney's fees, costs and expenses incurred and to be incurred in contemplated litigation which "would be necessary in its appeal to the courts for justice and protection from the vindictive and unwarranted destruction of said association by said John H. Fahey, et al." (R. 58). The cross-claim alleged that Fahey and Ammann personally, or as Conservator or in some other capacity, claimed that they were entitled to and owners of the check and the funds it represents,

[5] Thereafter, pursuant to court order and agreement of the parties, the Home Investment Company, trustor on these 174 deeds of trust, deposited approximately $800,000 in the registry of the District Court, and secured reconveyances by the Title Service Company (R. 247–254, 265–277, 305, 319–327). The sum of $800,000 remains in the court's registry. No question concerning these transactions with Home Investment Company is presented here.

and that the defendant Long Beach insisted and demanded that said check and the funds it represents be used for the purpose for which it was appropriated, and for the resistance and defense of the Association against the "illegal, unconstitutional and malicious attack made upon it by the said defendants John H. Fahey and A. V. Ammann." The cross-claim prayed that Fahey and Ammann be required to set forth their claims to the said check, that Long Beach likewise be required to do so, and that the court adjudge and determine their respective rights (R. 61–63). Service of process upon Fahey under both cross-claims in interpleader was made in the District of Columbia (R. 48–53, 63–67).

On July 1, 1946, the Association, pursuant to leave granted by the court (R. 179–181), and acting through its former management,* filed a third-party complaint against the Federal Home Loan Bank of Los Angeles, the Federal Home Loan Bank of Portland and the Federal Home Loan Bank of San Francisco, alleging that the merger of the Federal Home Loan Bank of Los Angeles and the Federal Home Loan Bank of Portland into the Federal Home Loan Bank of San Francisco was unlawful, unconstitutional and arbitrary, and praying for a decree that the third-

*Whenever reference is made, in this brief, to the Association of Long Beach taking a position or action in this litigation, the reference is to the Association acting through its former management.

party defendants be required to account to the Association for all of its assets which now are or have been in the possession of the third-party defendants or any of them, and that the court decree in which Federal Home Loan Bank the third-party plaintiff (i. e. the Association) owns stock, and which Bank is actually in existence (R. 222–232).[7] The Association also filed an answer to the original complaint and a cross-complaint against Fahey and Ammann, making essentially the same allegations as in the original complaint, and praying for substantially the same relief (R. 181–221).

Meanwhile the Association had, in May 1946, demanded, pursuant to Section 206.2 of the Regulations, *infra*, p. 114, a more definite statement of the causes for the Conservator's appointment (R. 83, 86–87), and such a statement was promptly furnished by the Bank Administration (R. 83–84, 88–91). On May 30, 1946, the Association, through its president and secretary, demanded the administrative hearing provided by Section 206.2, in order to show cause why the

[7] By order of the Federal Home Loan Bank Administration, the Federal Home Loan Bank of Los Angeles was combined, prior to the institution of the conservatorship or the present action, with the Federal Home Loan Bank of Portland, and the latter bank was moved to San Francisco, and its name changed to Federal Home Loan Bank of San Francisco (R. 291–295). A controversy has arisen regarding this merger, and a separate suit has been filed in the Southern District of California to set it aside. This suit has not yet been heard. See *infra*, pp. 99–100.

Conservator should not have been appointed and why he should be removed (R. 84, 92–94). The Bank Administration thereupon issued its Order No. 5309 directing the holding of such administrative hearing on July 3, 1946 in the city of Los Angeles (R. 84, 94–96). The order was duly served (R. 84) and published in the Federal Register for June 8, 1946, Vol. 11, page 6245.

On June 20, and July 1, 1946, respectively, the shareholder plaintiffs added to their pending motion to enjoin a merger of the Association (R. 67–76) (*supra*, p. 8), motions for a preliminary injunction and for a temporary restraining order to restrain the holding of the administrative hearing theretofore demanded by the Association's old management (R. 98–124, 236–243). The Title Service Company filed like motions (R. 125–128, 129–139) and the Association orally joined (R. 567–568). A temporary restraining order was immediately issued (R. 244–245).[8]

Appellant-defendant Ammann moved, on June 14, to dismiss the original complaint on the grounds that the court was without jurisdiction over appellant-defendant Fahey, an indispensable party, and that the complaint failed to state a

[8] The Association (R. 76–80), with the concurrence of the shareholder plaintiffs (R. 69), also moved the District Court "that plaintiffs' motion for a preliminary injunction restraining and enjoining the defendants from various acts be heard by the Honorable Court upon oral testimony in court of witnesses to be produced and subpoenaed to attend said hearings." (R. 77.)

cause of action (R. 82–96); Ammann later moved to dismiss the answer and cross-claim in interpleader of appellees Wallis and Title Service Company, as failing to state a cause of action (R. 262–263). Appellant Fahey appeared specially to move the dismissal of the action, or in lieu thereof, the quashing of the return of service of summons upon him, on the grounds that, since his official residence was in the District of Columbia and his personal residence in Massachusetts, he could not be sued in California, and that he had not been properly served with process in the action (R. 260–261). No answer was filed by either defendant-appellant to any of the complaints or cross-complaints, and time to answer had not expired, at the time of the judgment below.[9]

These pending motions[10] were set for hearing (R. 232–234) before a three-judge court, consisting of one circuit judge and two district judges (R. 305), which convened on July 15 and heard argument mainly upon the constitutionality of Section 5 (d) of the Home Owners' Loan Act (R. 306–308, 317–318, 607–704, especially R. 625,

[9] On September 9, 1946, the District Court extended the time of all parties to plead to a date "20 days after the entry of the Order or Judgment upon the Opinion of the court heretofore filed" (R. 379).

[10] The lower court's findings, conclusions, and decree list the various motions which were before the three-judge court (R. 491–492). They include only those motions referred to above, pp. 8, 13–14, plus an unopposed motion by plaintiffs to amend their complaint.

630, 704). On September 5, the three-judge court handed down an opinion holding that statutory provision invalid and ordering that judgment was to be "entered in accordance with this opinion" (R. 374–378). Without further hearings[1] or pleadings, the court, on September 30, entered its decree granting all the permanent relief asked for by plaintiffs, the two cross-claimants in interpleader, and by the Association in its answer and cross-complaint. The decree (a) ordered the Conservator's removal, (b) permanently restrained appellants from merging the Association, (c) permanently restrained appellants from holding an administrative hearing, (d) restored the old management to control of the Association, (e) ordered appellants to account for all transactions occurring during their control of the Association, and (f) permanently enjoined appellants "from ever asserting any claims, right, title, or interest" in or to the Association's property (R. 496–500).

The District Court refused to stay the execution and enforcement of its decree (R. 501–502), and a stay was secured from a Justice of this Court (R. vii). Thereafter, appellees filed a

[1] Appellees unsuccessfully (R. 758) moved a single judge, on September 14, 1946, before the issuance of the decree of the three-judge court, to oust the Conservator forthwith and restore the old management (R. 379–424, 710–760). No appeal has been taken by appellees from the denial of their motions.

motion to vacate the stay, which was denied by the Court on December 9, 1946.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In denying appellant Fahey's motion to dismiss or in lieu thereof quash the return of service of summons.

2. In denying appellant Ammann's motion to dismiss the complaint.

3. In making a determination upon the constitutionality of Section 5 (d) of the Home Owners' Loan Act of 1933.

4. In holding Section 5 (d) of the Home Owners' Loan Act of 1933 unconstitutional, and in failing to hold it constitutional.

5. In rendering a final judgment, before answer, without any appropriate motion or application for final relief or judgment, and without appropriate hearing and opportunity for defense; and in making final findings of fact and conclusions of law.

6. In denying appellant Ammann's motion to dismiss the answer and cross-claim in interpleader of appellee Title Service Company.

7. In denying appellant Ammann's motion to dismiss the answer and cross-claim in interpleader of appellee Wallis.

8. In granting the motion of appellee, Long Beach Federal Savings and Loan Association, for leave to file a third-party complaint against the

Federal Home Loan Bank of San Francisco and others.

9. In holding that it had jurisdiction of appellant Fahey, and that Section 57 of the Judicial Code was applicable to the instant action, and in entering personal orders, injunctions, and decrees against appellant Fahey.

10. In failing to hold that appellees are estopped from attacking the constitutionality of Section 5 (d) of the Home Owners' Loan Act.

11. In failing to hold that the complaint and cross-claims should be dismissed, and all relief denied, because appellees have not exhausted their administrative remedies.

12. In granting appellees' motions for preliminary injunction against appellants, in granting preliminary and permanent injunctions against appellants; in ousting appellant Ammann from control of the Long Beach Federal Savings and Loan Association; in restoring the former management to control of said Association; in ordering appellants to account; in declaring that they had no right, title, claim, or interest in the Association's property, and in granting other relief against them.

13. In entering its findings of fact, conclusions of law, and decree against appellants.

SUMMARY OF ARGUMENT

I. The District Court erred in passing upon the constitutionality of Section 5 (d) of the Home

Owners' Loan Act: First, the "long settled rule of judicial administration" requires appellees to exhaust their administrative remedy before seeking judicial relief. This they have failed to do. The Rules and Regulations for the Savings and Loan System provide for a full hearing on the appointment of a conservator, at the request of an association, and such a hearing was actually demanded by the Long Beach Federal Savings and Loan Association, and was about to be held by the Bank Administration when appellees reversed their position and secured injunctive relief against it. Under the established doctrine of exhaustion of administrative remedies, this rejection of the Bank Administration's hearing is sufficient to preclude all judicial relief and require dismissal of the action. The exhaustion doctrine applies even though it is claimed that Section 5 (d) is unconstitutional on its face. An administrative decision in favor of appellees, and return of the Association to its former management, will render the instant action moot, and disposition of the constitutional question, entirely unnecessary. Similarly, appellees are not excused from pursuing their administrative remedy because that remedy follows rather than precedes the appointment of the conservator. Such a hearing accords due process (see Point II (c)), and its successful pursuit would make the present judicial proceeding superfluous.

Secondly, appellees are estopped from contesting the validity of Section 5 (d). The Association

was voluntarily organized (mainly by the persons composing its present management) in 1934, under Section 5; both the Association and its organizers specifically agreed, in the charter and otherwise, to accept every term of that statute; at all times Section 5 (d), as it now stands, has formed a part of the statute, and the regulations concerning appointment of a conservator have remained substantially the same; the Association has carried on its business under the Act, under the Bank Administration's supervision, and secured the benefits of the Act, for over twelve years. Thus, those who organized Long Beach, became its shareholders, or dealt with it, did so voluntarily, with full knowledge of the applicable statutes and regulations. They have accepted the statute's benefits, and now seek to free themselves from burdensome, but integral, restrictions. For the period of the Association's existence, they have consistently invoked Section 5, and they must even now rely upon it in this proceeding to prove any right to recover; nevertheless they seek simultaneously to assail it. And to permit the overturn of Section 5 (d) would break faith with those who invested in or dealt with the Association in the belief that the Government's supervisory authority was what the statute provided. For these reasons, appellees are estopped, under established authority, from challenging the constitutionality of Section 5 (d).

Thirdly, the District Court lacked jurisdiction over appellant Fahey, Commissioner of the Federal Home Loan Bank Administration, who was never served in California, did not voluntarily appear, and has his official residence in the District of Columbia. Jurisdiction cannot be rested on Section 57 of the Judicial Code, governing actions "to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district"; the main relief sought here is an *in personam* decree enjoining action by appellants, rather than the adjudication of property rights; no real issues as to title, lien, clouds upon title, or claims to property exist. In any case, jurisdiction under Section 57 does not accord the District Court the right to grant any relief, against the absent defendant, which sounds *in personam*. Here, the lower court's decree contains both mandatory and prohibitory provisions requiring appellant Fahey to take designated action, and costs are even assessed against him.

Fourthly, appellant Fahey was an indispensable party, at least as to the injunction against merger of the Association and against the holding of an administrative hearing, since Ammann, the Conservator, possesses no authority or functions in those fields. Personal jurisdiction over Fahey not having been obtained in any case, the District Court plainly erred in granting such relief. As

for the portions of the decree ousting the Conservator from control of the Association, and restoring it to its old management, Fahey's indispensability is less clear. The cases are widely in conflict, but we submit, without developing the argument, that in the circumstances of this case the superior should have been joined.

For the foregoing reasons, the District Court should have dismissed the entire action, without passing upon the constitutionality of Section 5 (d). At the least, that court should not have granted any personal relief against Fahey, and should not have enjoined a merger of the Association or the holding of the administrative hearing.

II. In any event, Section 5 (d) of the Home Owners' Loan Act is clearly valid.

A. The court below held that Congress failed to provide sufficient standards for administrative action in appointing a Conservator, but, in our view, detailed policy and standards are provided, both expressly and by implication. There are at least five sources from which the administrator can draw guidance:

> (a) The meaning and connotation of the word "conservator," both in normal speech and legal usage, reveals significant criteria for the appointment of such an official. Generally, a conservator protects from injury someone or something which is unable to protect itself. In the field of the regula-

tion of financial institutions, only three months before the adoption of Section 5, in June 1933, Congress had invented the conservatorship as a new method of handling national banks whose affairs were not in satisfactory condition; it is reasonable to assume that Congress intended the Federal Home Loan Bank Board to be similarly guided. Light is also shed by other Federal statutes concerning conservators.

(b) The administrators of Section 5 can also find direction in the large body of judicial doctrine governing the appointment of receivers and similar officials, to which the statute implicitly refers. If the Act had authorized a court to appoint a conservator or receiver, no claim of unlawful delegation of legislative power would have been made. But the standards which would guide judicial action in such a case also exist for a non-judicial administrator.

(c) A third standard is supplied by the body of state rules governing appointment of receivers, conservators, or liquidators of state-regulated building and loan associations. Congress has expressly referred the Bank Administration to these state rules by requiring it to give "primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States." Section 5 (a). There is general agreement on the reasons and occasions for the state's taking possession of a mutual association, and a definite group

of standards, subsidiary policies, and rules exists to guide the Administration. The Administration's regulation on the appointment of a receiver or conservator follows the best of these state provisions very closely.

(d) Section 5 itself contains several standards to be applied to Section 5 (d), in addition to the reference to state practice quoted above, and to the general context of the Act. In particular, Subsections (a) and (e) establish applicable standards, and there are also incorporated by reference the standards of eligibility for insurance by the Federal Savings and Loan Insurance Corporation and for membership in a Federal Home Loan Bank. These express standards alone furnish a "verifable code of rules" governing appointment of a conservator.

(e) Finally, regard must be had to the reasons for the creation of Federal savings and loan associations, the events of the period of the enactment of Section 5, the nature of mutual building and loan associations, the traditional close supervision of their activities, and the interests which have been and must now be protected by governmental regulation. Especially to experts in the field, consideration of these factors leads to adequate standards for action, just as the broad standard of "public interest" draws meaning from the purpose of the act, the statutory scheme, and the context of the provision.

B. This Court's decisions on delegation of legislative power sustain the sufficiency of these standards, whether Section 5 (d) be narrowly confined to its own terms, or read more hospitably in the light of its background and statutory context. At their narrowest, the policy and standards guiding the Bank Administration are at least as specific and definite as "interurban," "bituminous coal," "appropriate" bargaining unit, "public interest," "just and reasonable rates," "unreasonable obstruction to navigation," or "primarily"—all of which have been upheld. If the section be read, as we urge, as referring the Administration to multiple factors bearing on a conservator's appointment, there is even less ground in the cases for invalidation. See *Yakus* v. *United States*, 321 U. S. 414; *American Power & Light Co.* v. *Securities and Exchange Commission*, this Term, Nos. 4 and 5, decided November 25, 1946.

C. The District Court also invalidated Section 5 (d) because it does not in terms provide for an administrative hearing. It may be doubted whether a hearing is constitutionally required in this case, but in any event the statute specifically authorizes the adoption of rules and regulations governing the appointment of a conservator, and those regulations provide for a full hearing. Appellees were tendered, but refused, a hearing, and thus actually received the full measure of due process. The holding of the hearing after the conservator's appointment does not deny due

process. Harm is not likely to come to an institution during a temporary unnecessary conservatorship, but failure of the Bank Administrator to take speedy action, when that appears *prima facie* necessary, may cause irreparable injury. Some twenty-five States provide for governmental taking over of State-regulated building and loan associations without prior hearing.

III. The District Court plainly erred in entering a final judgment after a hearing limited to plaintiffs' motions for partial preliminary relief and defendants' motion to dismiss for lack of jurisdiction and failure to state a cause of action. All the relief appellees had prayed for in their complaint and cross-complaints was granted, even though appellants' time to answer had not expired and they were not in default, and without any trial on the facts or opportunity for the appellants to answer, present further defenses, or disprove factual allegations on which appellees' right to relief rests.

IV. Title Service Company's and Wallis' cross-claims in interpleader should have been rejected, as failing to come within Federal interpleader requirements. These two interpleaders were designed and have been used solely as a device for adding two outside parties, neither of whom has the slightest standing to contest constitutionality, to attack the validity of Section 5 (d). The third-party complaint of the Association, acting

through its former management, against the Federal Home Loan Banks of Los Angeles, Portland, and San Francisco should also have been rejected as improper under the Federal Rules, and calculated to entangle this case with another unrelated action.

ARGUMENT

The District Court has invalidated, in its entirety, section 5 (d) of the Home Owners' Loan Act,[12] which is the primary source of the power by which the Federal Home Loan Bank Administration can enforce its supervisory authority over Federal savings and loan associations.[13] This action was taken in disregard of two significant canons of decision which should have prevented a decision of the issue of unconstitutionality: (a) appellees, having willingly received the benefits and invoked the provisions of the statute, are now

[12] Section 5 (d) provides as follows:

"The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

[13] At the end of 1933, there were 59 Federal savings and loan associations, with $513,203 of total assets. *Annual Report of Federal Savings and Loan Associations for the Year Ended December 31, 1936.* At the end of 1946, there were 1,471 Federal savings and loan associations, with $4,671,503,000. *Federal Home Loan Bank Review*, Vol. 13, No. 5, February, 1947, page 163, Table 13.

estopped to attack it, and (b) appellees have rejected the administrative remedy open to them. Moreover, the determination of unconstitutionality on the ground of improper delegation of legislative authority was made with but the slightest consideration of the nature of the statute, the type of institutions it regulates, the express and implied standards of administrative action to be found within it, and with a narrow reading of Congressional acts—practices which this Court has long disavowed. Finally, by its unique and precipitate granting of final relief before appellants had opportunity to present all their defenses, the lower court departed from orderly and just judicial administration. For these main reasons, we believe that the District Court's judgment should be reversed, and the case dismissed. Appellees have cluttered the case and the record with a conglomerate of unproven and untried charges, a mass of claims against appellants and a multiplicity of parties,[14] but, in our view, the issues

[14] It is probable that the shareholder plaintiffs, suing derivatively to enforce the Association's alleged cause of action against appellants (*Price* v. *Gurney*, 324 U. S. 100, 105), have no standing to sue, since they have failed to show and cannot show, despite some shadowy allegations in their amended complaint (R. 313–314), that they have exhausted all means to secure action by the Association itself, as is required in all secondary actions by shareholders. *Hawes* v. *Oakland*, 104 U. S. 450, 460–461; Federal Rules of Civil Procedure, Rule 23 (b). The alacrity with which the Association, acting through its officers, cross-claimed against appellants is proof enough of its willingness to proceed with the action. This

presented to this Court, on this appeal, involve those matters of constitutional law and proper judicial practice which have been outlined. We shall not, therefore, undertake to deny or disprove the allegations as to misconduct by appellants which are improperly strewn throughout the record, nor shall we engage in documenting, at this stage of the litigation, the charges which the Federal Home Loan Bank Administration has made against the former management of the Long Beach Federal Savings and Loan Association.

I

THE DISTRICT COURT SHOULD NOT HAVE PASSED UPON THE CONSTITUTIONALITY OF SECTION 5 (D) OF THE HOME OWNERS' LOAN ACT

A. *Judicial relief is not available until appellees have exhausted their administrative remedy*

The complaint of appellee-shareholders and of the appellee-Association should have been dis-

willingness is further demonstrated by the fact that the Association, at the instance of the directors, joined in both motions for interlocutory injunctions, and, having admitted all the allegations in the original complaint, joined with the plaintiffs in arguing against appellants' motions to dismiss (R. 626–650, 701–702), and consented to the District Court's decree (R. 456–463), although its cross-complaint had not been put in issue at the time of the hearing. The result is that the shareholders and the Association have pursued the same course, sought the same relief, and maintained the same views throughout this litigation. Although this duplication of parties is burdensome, we do not here press the plaintiffs' lack of standing to sue derivatively, since the Associaiton itself is an active party to the action and dismissal of the shareholders' complaint would not end the litigation.

missed as premature because these appellees have not exhausted their administrative remedies.[15] The crux of the entire suit was the alleged invalidity and impropriety of the appointment of the Conservator and the taking over of the Association.[16] But there was plainly available to appellees an administrative remedy through which they might secure the full redress of withdrawal of the order appointing the Conservator. The applicable regulations provide for an administrative hearing, at the request of an association, at which the association "may appear and show cause why the conservator or receiver should not have been appointed and why an order should be entered by the Federal Home Loan Bank Administration discharging the conservator or receiver."[17] The Association, acting through its

[15] Dismissal of these complaints would necessarily lead to dismissal of the interpleaded cross-claims which rest upon the main claims.

[16] In addition to the unconstitutionality of Section 5 (d) of the Home Owners' Loan Act, the complaint and cross-complaints allege that the action of the Bank Administration in appointing the Conservator was arbitrary (R. 5–10, 11, 314, 197), and appellees may have intended thereby to place in issue the validity of the appointment, even if Section 5 (d) be held constitutional.

[17] The applicable paragraph of the regulations reads as follows:

"206.2 *Hearing on appointment.*—Within fourteen days (Sundays and holidays included) after the appointment of a conservator or receiver for a Federal association not at the time of such appointment in the hands of a conservator, such Federal association, which has not, by its board of directors, consented to or requested the appointment of a conservator

board of directors, actually proceeded under this provision and, in May 1946, requested such an administrative hearing (R. 92–94). But on July 1, 1946, the main appellees (i. e. the shareholders and the Association) turned around and asked the District Court temporarily to restrain the holding of the administrative hearing which they had requested, and moved for a preliminary injunction to the same effect (R. 98–124, 567–568). Not only have they refused to exhaust the administrative remedy specifically provided for these cases, but they have fought to prevent the Bank

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or receiver, may file an answer and serve a written demand for a hearing, authorized by its board of directors, which demand shall state the address to which notice of hearing shall be sent. Upon receipt of such answer and written demand for a hearing the Federal Home Loan Bank Administration shall issue and serve a notice of hearing upon the institution by mailing a copy of the order of hearing to the address stated in the demand therefor and shall conduct a hearing, at which time and place the Federal association may appear and show cause why the conservator or receiver should not have been appointed and why an order should be entered by the Federal Home Loan Bank Administration discharging the conservator or receiver. Such hearing shall be held either in the district of the Federal Home Loan Bank of which such Federal association is a member or in Washington, D. C., as the Federal Home Loan Bank Administration shall determine, unless the association otherwise consents in writing. Such hearing may be held before the Federal Home Loan Bank Commissioner or before a trial examiner or hearing officer, as the Federal Home Loan Bank Administration shall determine. Such Federal association, which has not, by its board of directors, consented to or requested the appointment of a conservator or receiver, may, within seven days (Sundays and holidays included) of such appointment, serve a written or telegraphic demand, authorized by its

Administration from making that remedy available to them.[18]

Appellees' complaint should, therefore, have been dismissed under the "long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50–51; *Macauley* v. *Waterman Steamship Corp.*, 327 U. S. 540; *Goldsmith* v. *United States Board of Tax Appeals*, 270 U. S. 117, 123; *Federal Power Comm.* v. *Arkansas Power & Light Co.*, this Term, No. 543, decided *per curiam* March 10, 1947. No reason appears why appellees should not have proceeded with the administrative hearing which they initiated, and if the outcome proved unsatisfactory, thereafter sought judicial relief. That the administrative hearing in this case is provided by lawful regulation rather than by the statute is certainly not ma-

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board of directors, upon the Federal Home Loan Bank Administration for a more definite statement of the cause or causes for the action. The time of service upon the Federal Home Loan Bank Administration for the purposes of this Section shall be the time of receipt by the Secretary of the Federal Home Loan Bank Administration."

[18] Under the terms of Order No. 5309, dated June 5, 1946, which set the administrative hearing, shareholders and other interested parties could intervene in and appear at the hearing (R. 25):

"And it is further ordered that any person, partnership, association, or corporation claiming to have an interest in the subject matter involved may, at any time before the closing of the hearing, file a petition for leave to intervene at said hearing."

terial. *Goldsmith* v. *United States Board of Tax Appeals, supra; American Power & Light Company* v. *Securities and Exchange Commission,* this Term, Nos. 4 and 5, decided November 25, 1946, slip opinion, pp. 12–14; see *infra,* pp. 87–89. And appellees are not excused from pursuing their administrative remedy because that remedy follows rather than precedes the order of appointment. *Goldsmith* v. *United States Board of Tax Appeals, supra; Yakus* v. *United States,* 321 U. S. 414, 436, 442; *Bowles* v. *Willingham,* 321 U. S. 503, 519–521. As we show below, pp. 89–90, the timing of the hearing accords fully with due process, and that being so, there is no reason why the exhaustion doctrine should not be applied. Successful pursuit of the administrative remedy would result in the Conservator's discharge and the restoration of the former management, and would thereby render the instant judicial action, which seeks no more than such relief, wholly unnecessary. The holding of the administrative hearing is therefore a necessary prerequisite to the intervention of a court of equity.

Nor may an exception be read into the exhaustion doctrine when a statutory provision is claimed to be unconstitutional *in toto,* and on its face, as appellees contend here. *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41, among other cases,[19] settles that administrative remedies must

[19] *Gorham Manufacturing Co.* v. *State Tax Commission,* 266 U. S. 265; *St. Louis-San Francisco Ry. Co.* v. *Alabama Pub. Serv. Comm.,* 279 U. S. 560; *Dalton Machine Co.* v.

be followed even though a constitutional question is raised. There the company was contending that the National Labor Relations Act could not constitutionally be applied to its operations. And this Court recently stated in *United States* v. *Ruzicka*, No. 54, this Term, decided December 16, 1946, slip sheet, p. 7, that even when questions are "formulated in constitutional terms," the administrative procedure must be followed. In *Arrow Distilleries* v. *Alexander*, 24 F. Supp. 880, 882 (D. D. C.), affirmed on other grounds, 306 U. S. 615, a three-judge district court held that although the National Labor Relations Act had been held constitutional prior to *Myers* v. *Bethlehem Shipbuilding Corp.*, "the rule applies even though the question of constitutionality is undecided." We submit that the principle is the same whether the question relates to the constitutionality of the statute as applied in a particular case (*Myers* v. *Bethlehem Shipbuilding Corp.*, *supra*) or to the constitutionality of the act as a whole (*Lawrence* v. *St. L.-S. F. Ry.*, 274 U. S. 588; *White* v. *Johnson*, 282 U. S. 367, 373; cf. *Gorham Manufacturing Co.* v. *State Tax Commission*, 266 U. S. 265), which, of course, is relevant only as it pertains to the particular case (*White* v. *Johnson*, *supra*).

Virginia, 236 U. S. 699; *McGregor* v. *Hogan*, 263 U. S. 234, 238; *First Natl. Bank* v. *Weld County*, 264 U. S. 450; *Lawrence* v. *St. L.-S. F. Ry.*, 274 U. S. 588; *White* v. *Johnson*, 282 U. S. 367, 373; cf. *Federal Trade Commission* v. *Claire Furnace Co.*, 274 U. S. 160.

In the one situation, as in the other, an administrative decision in favor of the aggrieved party will terminate the proceeding without the determination of any constitutional question. Here, if the Bank Administration, after hearing, should discharge the Conservator, the constitutionality of Section 5 (d) would be wholly immaterial so far as the appellees are concerned.[29] The reasoning of *Alma Motor Co.* v. *Timken Co.*, No. 11, this Term, decided December 9, 1946, which held that a circuit court of appeals should pass upon non-constitutional questions first in order to avoid dealing with constitutional issues unless absolutely essential to the disposition of the case, would seem even more clearly to require the courts to refrain from acting while the controversy is in the course of administrative determination. The undesirability of deciding a constitutional issue when the case may not call for it is supplemented by the recognized rule against unnecessary and premature judicial intervention in the administrative

[29] Appellees cannot, of course, excuse their failure to resort to the administrative hearing by claiming that the Administration was sure to deny relief. "In the absence of any proceeding before the Administrator we cannot assume that he would fail in the performance of any duty imposed on him by the Constitution and laws of the United States, or that he would deny due process to petitioners by 'loading the record against them' or denying such hearing as the Constitution prescribes." *Yakus* v. *United States*, 321 U. S. 414, 434. See also, *Gilchrist* v. *Interborough Co.*, 279 U. S. 159, 208–209; cf. *Highland Farms Dairy Co.* v. *Agnew*, 300 U. S. 608, 616–617.

process. The appellees cannot be legally harmed by allowing the administrative hearing to continue to conclusion since their constitutional objections are not waived by resort to administrative remedies. *St. Louis-San Francisco R. Co.* v. *Alabama Pub. Serv. Comm.*, 279 U. S. 560, 562–563; *Myers* v. *Bethlehem Shipbuilding Corp., supra.*

B. *Appellees are estopped from contesting the validity of Section 5 (d).*

The Home Owners' Loan Act, authorizing the establishment of Federal savings and loan associations and containing Section 5 (d) as it now reads, was enacted into law on June 13, 1933. In May, 1934, a group of persons (including T. A. Gregory and the present officers of Long Beach) applied to the Federal Home Loan Bank Board "for permission to organize a Federal savings and loan association" (R. 140, 146); and petitioned for a charter for such an association, averring that "they have complied in all respects with Home Owners' Loan Act of 1933 and rules and regulations of the Federal Home Loan Bank Board for the organization of a Federal savings and loan association" (R. 151), and praying that "they, their associates, and successors, be incorporated and made a body corporate * * * with all powers, privileges, and immunities, and subject to such conditions and restrictions as are provided in said act and rules and regulations made thereunder" (R. 141, 151). Pursuant to

this application and petition, a charter (known as Charter E) was issued to Long Beach on July 10, 1934, and accepted by it (R. 141). This charter contained the following provisions relevant to the instant case (R. 141, 160):

> 15. The association shall at all times be subject to the provisions of the Home Owners' Loan Act of 1933, providing for Federal savings and loan associations, and to any amendments thereof, and to any valid rules and regulations made thereunder as the same may be amended from time to time.
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> * * * * *
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> 19. The bylaws adopted by the association shall provide for the management of the association within the provisions of the law and this charter and the rules and regulations of the Federal Home Loan Bank Board.
>
> [redacted]. The association may be liquidated, merged, consolidated, or reorganized, as is provided in the rules and regulations for Federal savings and loan associations made by the Federal Home Loan Bank Board.

At the time of this application, and of the issuance and acceptance of the charter, the Board's regulations designating the occasions for the appointment of a conservator were in terms substantially identical to the current regulations (R. 141–143).

In April, 1937, Long Beach petitioned the Board to amend its charter by substituting a new form,

Charter K, in place of Charter E (R. 143, 162–163), and this petition was duly granted, and the amended charter issued and accepted (R. 143). Charter K provided, in part, as follows (R. 143–144, 164):

> The association shall have perpetual succession and power to sue and be sued, complain and defend in any court of law or equity; to have a corporate seal, affixed by imprint, facsimile or otherwise; to appoint officers and agents as its business shall require, and allow them suitable compensation; to have bylaws not inconsistent with the Constitution or laws of the United States, this charter, and rules and regulations of the Federal Home Loan Bank Board, providing for the management of its property and regulation and government of its affairs; to wind up and dissolve, merge, consolidate, or reorganize in the manner provided by law and rules and regulations made thereunder; and to conduct business in the territory of the United States except as otherwise limited in this charter. * * *
>
> In addition to the foregoing powers expressly enumerated, the association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers. The association shall have such powers as are conferred by law *and shall exercise its powers in conformity with the Home Owners' Loan Act of 1933 and*

> *all laws of the United States as they now are, or as they may hereafter be amended,* and with the rules and regulations made thereunder which are not in conflict with this charter. [Italics supplied.]

At that time, the Board's regulations on the appointment of a conservator were likewise substantially identical to the current rules, except that it was provided that "before the appointment of a conservator or receiver, the Federal association will be given opportunity to be heard; provided, however, that the Board may appoint a temporary conservator pending such hearing" (R. 144–145).

It is plain from these few undeniable facts that (a) Long Beach was voluntarily organized under Section 5 of the Home Owners' Loan Act, (b) that both it and its organizers specifically agreed to accept every term of that statute, (c) that at all times Section 5 (d), as it now stands, has been a part of the Act, and the regulations have read substantially as they now read, and (d) that Long Beach has carried on its business under the Act, and subject to the Board's supervision, for over twelve years. Appellees now seek to continue operation of the Association, which would have no existence apart from Section 5, without regard to the limiting provisions of Section 5 (d). But their way is barred by the well-established rule of estoppel which denies to Long Beach, and the shareholders suing de-

rivatively on its behalf, the right to contest the constitutionality of Section 5 (d). They cannot "retain the benefits of the Act while attacking the constitutionality of one of its imporant conditions." *United States* v. *City of San Francisco,* 310 U. S. 16, 29. "The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits" (Brandeis, J., concurring in *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 348).

Every classic reason for holding litigants estopped from litigating the constitutionality of a Federal statute exists here. First, those who organized Long Beach, and those who became its shareholders, did so voluntarily, with full knowledge of the applicable statutes and regulations. The provisions appellees now attack have always been a part of the governing law, and if appellees or their predecessors in interest objected to these requirements they were entirely free to refuse to have anything to do with a Federal savings and loan association. As the Court, speaking through Mr. Justice Holmes, said of a Torrens title holder who attempted to attack certain features of the Torrens system as unconstitutional: "Even if the restrictions were of a kind that was open to constitutional objection, the appellants bought knowing them and got what they paid for, and knew that they were liable to lose their title without having parted with it and without being heard.

Even if they had been the original holders under the Torrens Act [of Illinois] and had attempted to save their supposed rights by protest the answer would be that they were under no compulsion when they came into the system, that an elaborate plan was offered of which the provisions objected to were an important part, and that they could take it as it was or let it alone." *Eliason* v. *Wilborn*, 281 U. S. 457, 459–460.

In such cases, the complaining party "is not obliged to avail himself of the privilege conferred; if he does so, he takes it with the condition attached. He cannot complain that his constitutional right has been invaded by virtue of his own voluntary act in availing himself of a conditional privilege tendered him. If he does not like the condition, he need not exercise the option." *Nuckolls* v. *United States*, 76 F. 2d 357, 360 (C. C. A. 10). To the same effect are *Electric Company* v. *Dow*, 166 U. S. 489, 490 (the party availing itself of elective damage assessment provisions of a special State condemnation statute could not attack provision adding 50% to amount of verdict; "the act confers a privilege, which the plaintiff in error was at liberty to exercise or not as it thought fit."); *Grand Rapids and Indiana Ry. Co.* v. *Osborn*, 193 U. S. 17, 29 (railroad company incorporated under Michigan incorporation law held estopped to question the statute's rate provisions); *Interstate Consolidated Street Ry. Co.* v. *Massachusetts*, 207 U. S. 79,

84 (Massachusetts street railway company bound by allegedly invalid fare provisions of law under which it was organized); *Booth Fisheries Company* v. *Industrial Commission of Wisconsin*, 271 U. S. 208 (employer electing to come under voluntary State compensation act cannot contest validity of the statute's judicial review provisions); *Pierce Oil Corp.* v. *Phoenix Ref. Co.*, 259 U. S. 125 (corporation bound by statutory requirement that it act as a common carrier, which was in force when it entered the State and secured the privilege of doing local business); *United States* v. *City and County of San Francisco*, 310 U. S. 16, 29 (city voluntarily accepting congressional statute granting lands for city water purposes cannot attack validity of a provision of the grant).[21]

[21] Lower Federal courts have applied the same principle: *American Bond and Mortgage Co.* v. *United States*, 52 F. 2d 318, 321–322 (C. C. A. 7), certiorari denied, 285 U. S. 538 (radio licensee cannot attack constitutionality of revocation provision of statute under which license granted); *North Dakota-Montana Wheat Growers' Assn.* v. *United States*, 66 F. 2d 573, 579 (C. C. A. 8), certiorari denied, 291 U. S. 672 (one accepting loans under the Agricultural Marketing Act cannot later question its validity); *Moor* v. *Texas & N. O. R. Co.*, 75 F. 2d 386, 389–390 (C. C. A. 5) (shipper availing himself of Bankhead Act to secure tax exemption certificates cannot question conditions imposed by the Act); *Baltimore and Ohio Ry. Co.* v. *Lambert Run Coal Co.*, 267 Fed. 776 (C. C. A. 4), certiorari denied, 254 U. S. 651 (coal company securing equal distribution of coal cars under statute bound by statute's limitations); *Nuckolls* v. *United States*, *supra* (taxpayer accepting privilege to defer income tax payments cannot test validity of conditions imposed on that privilege).

The only occasion for departing from this rule would be the presence of duress limiting the attacking party's real freedom to choose or reject the statutory scheme. Cf. *Union Pacific Railroad Co.* v. *Public Service Commission*, 248 U. S. 67, 70. But here such duress does not, and could not, exist. No compulsion could force a group of California citizens to form a new Federal savings and loan association under Section 5 of the Home Owners' Loan Act; there was no existing business which had to be protected by compliance with a new regulation or suffer disastrous loss, as in the *Union Pacific* case, *supra*. Long Beach's organizers desired the benefits of operating as a Federal institution under Section 5, and because they desired those benefits, they asked for a charter, fully aware of the terms of both statute and regulations.

A second, and somewhat different, formulation of the estoppel principle puts it that a party cannot first accept the privileges and benefits of a statute and later attempt to free himself from other integral, but burdensome, provisions not to his liking. *Daniels* v. *Tearney*, 102 U. S. 415, 421; *Grand Rapids & Indiana Ry. Co.* v. *Osborn*, *supra*; *Wall* v. *Parrot Silver & Copper Co.*, 244 U. S. 407, 411–412; *St. Louis Malleable Casting Co.* v. *George C. Prendergast Construction Co.*, 260 U. S. 469; *Booth Fisheries Co.* v. *Industrial Commission*, *supra*; *United States* v. *City and County of San Francisco*, *supra*; *American Bond*

& Mortgage Co. v. *United States, supra; North Dakota-Montana Wheat Growers' Assn.* v. *United States, supra; Baltimore & Ohio Ry. Co.* v. *Lambert Run Coal Co., supra; Moor* v. *Texas & N. O. Ry. Co., supra.* Appellees' pleadings are sufficient warrant of the benefits they have received from Section 5 of the Home Owners' Loan Act. Long Beach has operated and prospered as a Federal savings and loan association for over a decade (R. 5, 493). The Association and its shareholders have secured important tax exemption rights (Section 5 (h)); financial aid by the United States was available (Section 5 (g) (j)), and was actually granted (R. 532); the resources of the Federal Home Loan Banks were available (Section 5 (f)). Even now appellees seek to retain all these benefits while disowning only the effective supervision which Section 5 (d), and the regulations issued under it, place over them. The salutary rule of estoppel prevents their thus playing fast and loose with the statutory scheme they accepted as a whole in 1934.

A third statement of the rule stresses the attacking party's invocation of the statute he now assails. "It is true that one cannot in the same proceeding both assail a statute and rely upon it. *Hurley* v. *Commission of Fisheries,* 257 U. S. 223, 225." *Buck* v. *Kuykendall,* 267 U. S. 307, 316. And "it is not open to question that one who has acquired rights of property necessarily based upon a statute may not attack that statute as unconsti-

tutional * * *" *Frost* v. *Corporation Commission*, 278 U. S. 515, 527. It follows that those who have affirmatively proceeded under a statute, and still invoke its provisions to sustain their claim, must fail in singling out for invalidation only the particular statutory provisions which restrict their actions. Cases cited *supra*. See also *Shepard* v. *Barron*, 194 U. S. 553; *Wall* v. *Parrot Silver & Copper Co.*, 244 U. S. 407, 411; *United Fuels Gas Co.* v. *R. R. Commission*, 278 U. S. 300, 307–308; *North Dakota-Montana Wheat Growers' Assn.* v. *United States*, *supra*. Appellees fall squarely into this class. To succeed in the present law-suit they must rely on all the provisions of Section 5 of the Home Owners' Loan Act which give life, corporate existence, and power to Long Beach.[22] To oust the Conservator in favor of the former management, they must rest on the powers which that management secures from the charter, the regulations, and the Act, to prove that they are not interlopers. Whatever rights appellees have to secure relief must be derived from Section 5, and they have necessarily put themselves in the position of both assailing the statute and relying

[22] This reliance is shown quite neatly by the amendments to the shareholders' complaint which attempt to excuse the shareholders' failure to secure action from the Association's directors "because so to do would have been an idle act," for the reason that "if the acts, here in question [i. e. Section 5], are unconstitutional the officers and directors of said Association would not have statutory authority to act for the Association" (R. 314). See also R. 633, 643.

upon it in the same proceeding. Past invocation of, and reliance upon, the statute is, of course, indisputable, and we need not labor to pile up in detail the various affirmative steps which appellees, their predecessors, and those in whose place they stand, have taken, over the past twelve years, to secure the benefits, privileges, and immunities of the statute. Long Beach's entire existence is founded upon and entwined with the provisions of Section 5.

Finally, the special status of savings and loan associations as *quasi* public corporations in which the creating sovereign has an exceptional interest confirms the need to keep the Association to its original agreement. "Shareholders and creditors have assumed a relation to the business in the belief that the assets will be protected by all the power of the government against use for other ends than those stated in the charter," and for the Government "there is thus the duty of the *parens patriae* to keep faith with those who have put their trust in the parental power." *Hopkins Federal Savings & Loan Assn.* v. *Cleary*, 296 U. S. 315, 340. To permit the Association to free itself from the bonds of Section 5 (d), on which the Government's power to enforce its supervisory authority mainly rests, would be to break faith with those who invested in or dealt with the Association in the belief that the statute, the charter, and the regulations meant what they said.

C. *The District Court's lack of jurisdiction over Fahey prevented the granting of much, if not all, of the relief against appellants*

1. THE DISTRICT COURT DID NOT HAVE JURISDICTION OVER FAHEY

The lower court did not have jurisdiction of appellant Fahey, and could not validly enter any order or decree against him. Fahey was admittedly never served in California (R. 20–21, 43), he never voluntarily appeared in the action (R. 43, 260), and his official residence is in the District of Columbia (R. 261). Under the rules normally applicable to district court actions, suit was not properly brought against Fahey in the Southern District of California, and that court did not obtain jurisdiction over him. Judicial Code, Section 51, 28 U. S. C. 112; *Robertson* v. *Railroad Labor Board*, 268 U. S. 619, 622–623; *Transcontinental* v. *Western Air, Inc.* v. *Farley*, 71 F. 2d 288, 291–292 (C. C. A. 2), certiorari denied, 293 U. S. 603; *Howard* v. *United States ex rel. Alexander*, 126 F. 2d 667 (C. C. A. 10), certiorari denied, 316 U. S. 699.

a. Attempt is made, however, to rest jurisdiction over Fahey on Judicial Code, Section 57, 28 U. S. C. 118, which provides, in pertinent part, as follows:

> When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim

to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appear-

> ance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same State, such suit may be brought in either district in said State. * * *

This section is plainly inapplicable to the present action to enjoin officials of the Federal Home Loan Bank Administration from holding an administrative hearing, from merging Long Beach, and from continuing to operate it on behalf of the Administration. "Obviously the section is confined to suits which are local in the sense of relating directly to specific property, real or personal, within the district of suit or partly therein and partly in another district of the same State." *General Investment Co.* v. *Lake Shore & M. S. Ry. Co.*, 260 U. S. 261, 280. For the statute to apply, the main gist and burden of the action must seek relief against property within the district, and not *in personam* judgments against the defendants. *General Investment Co.* v. *Lake Shore & M. S. Ry. Co., supra*; *Findlay* v. *Florida East Coast Ry. Co.*, 68 F. 2d 540, 542 (C. C. A. 5), certiorari denied, 292 U. S. 623; *Wilhelm* v. *Consolidated Oil Corp.*, 84 F. 2d 739, 745–746 (C. C. A. 10); *Dan Cohen Realty Co.* v. *National Savings & Trust Co.*, 125 F. 2d 288, 290 (C. C. A. 6);

Moore & Friedman, *Moore's Federal Practice*, p. 345. The fact that the action concerns or grows out of property located within the district is never decisive. *Ladew* v. *Tennessee Copper Co.*, 218 U. S. 357; *Spellman* v. *Sullivian*, 43 F. 2d 762, 764 (S. D. N. Y.).

The property and assets of Long Beach are admittedly within the territorial jurisdiction of the lower court, but the crux of the relief sought is not against that property, but personal decrees against appellants Fahey and Ammann. Appellees' prayers are for (a) injunctions against merger of Long Beach, against the holding of an administrative hearing, and against further operation of Long Beach by appellants, (b) a mandatory injunction requiring appellants to turn over the Association's property and assets, and (c) an accounting "for all moneys and for income of all kinds" received by appellants.

The attempt to apply Section 57 rests on the false premise that by the appointment of a conservator, the assets and property of the Association were transferred from it to the conservator. But it is apparent from the statute and the regulations that a duly appointed conservator, unlike a receiver, does not take title to the Association or its assets. See Regulations, Section 206.4, *infra*, pp. 115–116. Whether under the management of its officers or of a conservator, title to the Association's assets remains in the Association.

And because a Federal savings and loan association is mutual and cooperative, it is at all times owned by its shareholders (Kress, *Introduction to the Cooperative Movement* (1941), p. 277). There has, therefore, been no change in title, ownership, or possession of property. There has been no more than a change in the trusteeship, in management; in brief, only a change in personnel of those acting for the Association.

Moreover, the action is clearly not one to enforce a "lien," nor can the order appointing the conservator be said to be an "incumbrance" or "cloud upon the title" to the Association's property which appellees are seeking to remove. *Devine* v. *City of Los Angeles*, 202 U. S. 313, 335; *Appalachian Electric Power Co.* v. *Smith*, 67 F. 2d 451, 455 (C. C. A. 4). As in the *Devine* case, the "assertion of unconstitutionality cannot be resorted to to maintain Federal jurisdiction as constituting a cloud. The averment of unconstitutionality in such circumstances is a mere pretext to obtain that jurisdiction" (p. 335). Likewise, appellees' suit cannot be classified as primarily one to enforce a "claim to * * * real or personal property," since the main relief requested and granted is injunctive relief running against appellants personally.

The instant case is no more within the purview of Section 57 than have been those cases refusing extra-district service where plaintiffs sought to enjoin two railroad companies from consolidating

(*General Investment Co.* v. *Lake Shore & M. S. Ry. Co., supra,* at 280); to enjoin the destruction of plaintiffs' forests by the discharge of deleterious fumes and gases from the defendants' works (*Ladew* v. *Tennessee Copper Co., supra.*, affirming 179 Fed. 245 (C. C. S. D. Tenn.)); to enforce payment of a debt out of specific property and for an accounting (*Vidal* v. *South America Securities Co.*, 276 Fed. 855, 873 (C. C. A. 2)); to rescind a purchase of land and recover the purchase money because of the fraud of seller and agent (*Camp* v. *Bonsal*, 203 Fed. 913, 915 (C. C. A. 4)); to compel trustees of a residuary trust estate, which included ownership of a railroad, to afford the railroad company assistance from the trust funds (*Findlay* v. *Florida East Coast Ry. Co., supra,* at 542); to rescind and cancel an agreement of corporate consolidation, and the conveyances and transfers of property made pursuant thereto (*Wilhelm* v. *Consolidated Oil Corp., supra,* at 745–746); or where plaintiff sought to compel specific performance of a contract to make a lease on land within the district (*Dan Cohen Realty Co.* v. *National Savings & Trust Co., supra*). In each of these cases, plaintiff's action was directly connected with property within the jurisdiction of the court, but resort to Section 57 was denied because, as here, the main relief sought was not a determination of rights in the property, but a personal decree requiring the defendants to take,

or abstain from taking, certain allegedly harmful action involving the property. For the same reason, the lower court should have denied appellees' petition for out-of-state service on Fahey.

b. Even if the action be held properly within Section 57, and service on Fahey in the District of Columbia sufficient "for the court to entertain jurisdiction," the District Court was not authorized to enter any personal decrees against Fahey. The statute itself provides that the court's "adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district." Out-of-state service under the section may serve to bind a defendant as to adjudged rights in the affected property, but it does not empower the court to award an injunction, an accounting, or any other relief sounding *in personam*. *Clarke* v. *Boysen*, 39 F. 2d 800, 815 (C. C. A. 10), certiorari denied, 282 U. S. 869; *Wilhelm* v. *Consolidated Oil Corp.*, *supra*; *McQuillen* v. *Dillon*, 98 F. 2d 726, 729 (C. C. A. 2); *McQuillen* v. *National Cash Register Co.*, 112 F. 2d 877, 881 (C. C. A. 4), certiorari denied, 311 U. S. 695; *Dan Cohen Realty Co.* v. *National Savings & Trust Co.*, *supra*. Accordingly, assuming *arguendo* that the decree was otherwise proper, the lower court erred in those portions of its decree which direct personal action

by Fahey,[24] and at least as to those portions of the decree reversible error was committed.[24]

2. FAHEY IS AN INDISPENSABLE PARTY TO THE GRANTING OF MUCH, IF NOT ALL, OF THE RELIEF SECURED BY APPELLEES

a. At least as to the injunctions against merger, and against holding an administrative hearing,[25]

[23] The decree orders Fahey (1) not to merge or consolidate Long Beach, (2) not to hold an administrative hearing, (3) to deliver all of the Association's property to the old officers, (4) to render an inventory of the Association's property, (5) to render an accounting, (6) not to assert any claim to the Association's property, (7) to produce the conservator's bond, and (8) to "do and perform such acts as are necessary or expedient to carry out the provisions hereof." (R. 496–500). Costs were also awarded against appellant Fahey (R. 499).

[24] This conclusion is not changed by the fact that Fahey, individually and as Commissioner, was also served with process in the District of Columbia, issued pursuant to an order of the court below (R. 48–53, 64–67), at the request of appellees Title Service Company and Robert H. Wallis, the purported cross-claimants in interpleader who deposited money into court, under Judicial Code, Section 24 (26), 28 U. S. C. 41 (26). Such service, even if valid for the purpose of determining claims to the property deposited in the registry of the court by the cross-claimants, did not bring Fahey within the court's jurisdiction for the purpose of granting the personal relief requested in the original complaint. *Stitzel-Weller Distillery, Inc. v. Norman*, 39 F. Supp. 182, 188 (W. D. Ky.). Moreover, as we shall later show, the alleged interpleaders were improperly granted, and the District Court did not obtain jurisdiction over Fahey even for the limited purpose of the alleged cross-claims in interpleader. See *infra*, pp. 95–99.

[25] This was the only relief appellees actually moved the three-judge court to grant, and the only relief requested by appellees on which that court held its hearing (R. 491–492; *supra*, pp. 14–15; *infra*, pp. 90–95):

Fahey is an indispensable party, and personal jurisdiction over him not having been obtained, it was error to grant such relief. Section 5 of the Home Owners' Loan Act, and the implementing regulations, make it clear that the conservator has no part either in the merging of an association or in the holding of an administrative hearing. Section 5 (d) provides that the *Board* "shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations. * * *" At present, the regulations provide only for voluntary mergers by associations, or for involuntary mergers by *receivers;* in both cases, approval of the Commissioner is required. Sections 204.1 (b), 208.4. Nothing in the regulations allots any duties, powers, or functions concerning merger to a conservator. For an injunction against merger to be effective it would have to be directed against Fahey, and an injunction against Ammann alone would be both futile and improper, since he possesses no authority or functions in this sphere.

Fahey is also clearly an indispensable party to that part of the action praying for an injunction to restrain an administrative hearing on the appointment of the conservator. Section 206.2 of the regulations, *infra,* p. 114, provides that the Bank Administration shall grant and conduct a

hearing if requested by the Association. Ammann, as conservator, has no power or duties in connection with such a hearing; none are shown by the statute or by regulation, and none are alleged in the pleadings. Hence, it is apparent that Fahey, as Commissioner of the Bank Administration, is the sole necessary or proper party to any proceeding seeking to restrain such a hearing, and an injunction directed against Ammann alone would be useless and improper.

b. The indispensability of Fahey's presence as a party is less clear as to the portions of the decree enjoining Ammann from continuing to operate Long Beach, and requiring him to return the Association to the old officers. This part of the decree rests solely on the lower court's conclusion that Section 5 (d) is unconstitutional, and the order appointing the conservator necessarily invalid as a matter of law. As the Court has stated (*Brooks* v. *Dewar*, 313 U. S. 354, 359), the necessity of joining the superior in such an action against a local subordinate is a matter of widely conflicting decision.[20] If it is held that

[20] Compare *Warner Valley Stock Co.* v. *Smith*, 165 U. S. 28; *Oklerich* v. *Rutter*, 263 U. S. 388; *Webster* v. *Fall*, 266 U. S. 507; *National Conference on Legalizing Lotteries, Inc.*, v. *Goldman*, 85 F. 2d 66 (C. C. A. 2); *Chamberlain* v. *Lemback*, 18 F. 2d 408 (C. C. A. 3); *Doran* v. *Charles D. Kaier Co.*, 60 F. 2d 259 (C. C. A. 3); *Ainsworth* v. *Barn Ballroom Co.*, 157 F. 2d 97 (C. C. A. 4); *Jump* v. *Ellis*, 100 F. 2d 130 (C. C. A. 10), certiorari denied, 306 U. S. 645 (all holding

extra-state service under Section 57 of the Judicial Code gave the lower court jurisdiction over Fahey for the purposes of adjudication affecting Long Beach's property, the issue of his indispensability to the granting of relief ousting Ammann from possession is not presented. If the Court holds, as we urge, that no jurisdiction over Fahey has been obtained for any purpose, the question of his indispensability is before the Court. We submit that the correct ruling, in this instance, is that the Commissioner must be joined and that the action must fail for non-joinder, but we shall not argue the point,[27] since we believe that the District Court committed several more fundamental errors, and appellees' claims should be dismissed for weightier reasons.

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superior an indispensable party), with *Colorado* v. *Toll*, 268 U. S. 228; *Jarvis* v. *Shackleton Inhaler Co.*, 136 F. 2d 116 (C. C. A. 6); *Varney* v. *Warehime*, 147 F. 2d 238 (C. C. A. 6), certiorari denied, 325 U. S. 882; *Greer* v. *Cline*, 148 F. 2d 380 (C. C. A. 6); *Rood* v. *Goodman*, 83 F. 2d 28 (C. C. A. 5), certiorari denied, 299 U. S. 551; *Ryan* v. *Amazon Petroleum Corp.*, 71 F. 2d 1 (C. C. A. 5), reversed on other grounds, 293 U. S. 388; and *Yarnell* v. *Hillsborough Packing Co.*, 70 F. 2d 435 (C. C. A. 5) (holding presence of superior to be unnecessary). *Neher* v. *Harwood*, 128 F. 2d 846, 849 (C. C. A. 9), certiorari denied, 317 U. S. 659 holds the superior an indispensable party except where, as here, the constitutionality of the statute authorizing the administrative action is assailed.

[27] The Brief for the Petitioner, in *Brooks* v. *Dewar*, No. 718, October Term, 1940, pp. 27-35, contains an extended discussion of the question of the indispensability of the superior officer.

II

SECTION 5 (D) OF THE HOME OWNERS' LOAN ACT IS CONSTITUTIONAL

The lower court held that Section 5 (d) of the Home Owners' Loan Act of 1933, authorizing the appointment of a conservator, was "unconstitutional and void as attempting to delegate legislative power to the Federal Home Loan Bank Board." The section, the court said, is (R. 377):

> "brief and unambiguous." It makes no attempt to lay down rules for the guidance of the Board, nor does it state in what circumstances or under what conditions the Board is to merge institutions or appoint a conservator or receiver. It establishes no criterion to govern the board's course. It does not require any finding by the board as a condition of its action. No policy is declared by Congress as to merger or appointment of conservator. The section gives to the board unlimited authority to formulate rules for the board's action in the respects mentioned and to do so as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to govern itself. We are unable to find in the Act a declaration of policy or standard of action which can be deemed to relate to the subject of section 5 (d).

Since it invalidated Section 5 (d) as a whole, the court did not pass upon or consider the regulations issued thereunder.

A. *Detailed standards guiding administrative action are provided expressly and by implication.*

1. *Appointment of a Conservator:* The lower court's sweeping condemnation of Section 5 (d) (Cf. *Panama Refining Co.* v. *Ryan,* 293 U. S. 388, 415), in terms more fitting for broad general legislation such as the National Industrial Recovery Act, seems somewhat extravagant in the face of the narrow reach of the statute. Under Section 5 (d), the Bank Administration's authority is limited to Federal savings and loan associations; the disputed administrative action authorized by Congress is the restricted one of "power to appoint a conservator or a receiver to take charge of the affairs of any such association." The field of administrative operation is necessarily confined within this framework, and the range of discretion necessarily limited. No question is raised of vagueness, indefiniteness, or undue breadth in the substance of the power, i. e. the appointment of a conservator. The sole question concerns the occasions for its use: whether Congress has sufficiently indicated to the Bank Administration the standards and policy which should govern the administrative use of this single definite power to appoint a conservator or receiver.

The District Court blinded itself to the plentiful guides to administrative action furnished, explicitly and implicitly, by the Home Owners' Loan Act of 1933, and related statutes. The basic factors to be considered need not be specifically named within the four corners of Section 5 (d). It is enough if they may be gathered from that section, other portions of the statute, or related acts, or if they are otherwise disclosed by "the history of the act and its proper construction." *Buttfield* v. *Stranahan*, 192 U. S. 470, 494–496; *New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 24–25; *American Power & Light Co.* v. *Securities and Exchange Commission*, Nos. 4 and 5, this Term, decided November 25, 1946, slip opinion, p. 10; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 416; *The Intermountain Rate Cases*, 234 U. S. 476, 487–488. In our view, there are at least the following sources from which adequate guides to administrative action under Section 5 (d) are to be drawn: (a) the meaning and connotation of the words "conservator" and "receiver"; (b) the body of judicial equity decisions on appointment of receivers and conservators; (c) the rules governing the appointment of receivers, conservators, or liquidators for state-regulated building and loan associations, and similar institutions; (d) general and special standards established in the provisions of Section 5 and related statutes; and (e) the history of the times and the forces im-

pelling the establishment of Federal savings and loan associations, and the nature and history of mutual loan associations.

a. *Meaning of "conservator":* Section 5 (d) empowers the Administration to provide for the "reorganization, consolidation, merger, or liquidation" of Federal savings and loan associations, specifically including "the power to appoint a conservator or a receiver to take charge of the affairs of any such association * * * and to release any such association from such control and permit its further operation." This section obviously envisages temporary control of an association, in connection with its reorganization, consolidation, merger, or liquidation, by an official appointed by the Administrator. The general purposes for which, and the occasions on which, such an official may be appointed are largely inferrable from the terms by which Congress has described him: "receiver" and "conservator."

(1) A conservator, according to Webster's New International Dictionary, is "one who preserves from injury or violation; a protector; a preserver."[*] More specifically, it may be "a person, official, or institution designated, as by a court, to take over and protect the interests of an incompetent, as a minor child, an insane per-

[*] The Oxford English Dictionary's definition is: "One who preserves from injury; a preserver; guardian, keeper, custodian."

son, a convict, etc.," or the term may designate "any of various officials charged with the protection of something, as of the peace, riverbanks, fisheries, etc." The core of the concept of conservation is obviously the preservation of something from destruction, injury, or dissipation, and, in the case of human beings or human institutions, the assumption is that the object of the conservation is unable to perform the functions of self protection. A conservator is one who undertakes such a protective function on behalf of another.

The legal usage of the term conforms to this common understanding. Revenue Acts have long included the term, in the general definition of "fiduciary" for tax purposes, along with other persons "acting in any fiduciary capacity for any person." Internal Revenue Code, Sec. 3797, 26 U. S. C. 3797. Other statutes speak of a "receiver, conservator, liquidator, liquidating agent, or similar official" of a bank or financial institution (Investment Company Act of 1940, Sec. 3, 15 U. S. C. 80a–3 (c) (3)); of "a receiver, conservator, or other liquidating agent" of a bank (Securities Exchange Act of 1934, Sec. 3, 15 U. S. C. 78c (a) (6)); of "the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity." (Trust Indenture Act of 1939, Sec. 310, 15 U. S. C. 77 jjj (b) (9)).

(2) It is in the field of bank regulation that the institution of the conservator has been most used in recent years. The parent of Section 5 (d) of the Home Owners' Loan Act is, in all probability, Section 203 of the Bank Conservation Act of March 9, 1933, ch. 1, 48 Stat. 2, 12 U. S. C. 203, passed in the emergency days of March 1933 by the Congress which established Federal savings and loan associations a few months later. Section 203 [29] authorized the Comptroller of the Currency, "whenever he shall deem it necessary in

[29] Section 203 provides:

"Whenever he shall deem it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, the Comptroller of the Currency may appoint a conservator for such bank and require of him such bond and security as the Comptroller of the Currency deems proper. The conservator, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all the rights, powers, and privileges now possessed by or hereafter given receivers of insolvent national banks and shall be subject to the obligations and penalties, not inconsistent with the provisions of this title, to which receivers are now or may hereafter become subject. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto shall, subject to the other provisions of this title, be the same as if a receiver had been appointed therefor. All expenses of any such conservatorship shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other lien provided by this Act or otherwise. The conservator shall receive as salary an amount no greater than that paid to employees of the Federal Government for similar services."

order to conserve the assets of any [national] bank for the benefit of the depositors and other creditors thereof," to appoint a "conservator for such bank." Under the Comptroller's direction, the conservator is to take possession of the bank "and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law."[30] The purpose of this act was "to enable the Comptroller to appoint conservators rather than receivers where, in his judgment, there was a prospect that the bank of which a conservator should be appointed might, under his direction and control, later reopen and resume its corporate functions." *Davis Trust Co.* v. *Hardee*, 85 F. 2d 571, 572 (App. D. C.). The conservator's appointment is the "equivalent of the appointment of a receiver of a corporation with leave to continue the business and quite similar to the appointment of a trustee in a proceeding for the reorganization of a corporation under the Bankruptcy Act, 11 U. S. C. A. § 207." *Smith* v. *Witherow*, 102 F. 2d 638, 642 (C. C. A. 3). The validity of the provision has been expressly upheld. *Smith* v. *Witherow, supra.*

In Section 203 Congress thus spelled out the implications normally inherent in the concept of a "conservator". It is entirely reasonable to

[30] Webster's New International Dictionary gives the following as one of its definitions of "conservator": "a person placed by the Secretary of the Treasury in charge of a national bank whose affairs are not in a satisfactory condition."

assume that Congress, when it summarily authorized the Federal Home Bank Board to establish rules and regulations for the appointment of a conservator to take charge of the affairs of a Federal savings and loan association, had in mind this recent invention[31] of the appointment of a conservator to conserve the assets of national banks for the benefit of depositors and other creditors, and intended the word "conservator," in Section 5 of the Home Owners' Loan Act, to refer the Board to the general directives on the appointment of conservators which it had spelled out, three months earlier, for the Comptroller of the Currency, in so far as those directives were appropriate for a mutual building and loan association.[32]

Some further light on Congressional understanding of the place and function of a conservator is shed by provisions of two other statutes enacted by the Congress which passed the Home Owners' Loan Act. The Banking Act of 1933 (Act of June 16, 1933, ch. 89, Sec. 31, 48 Stat. 162, 194, 12 U. S. C. 71a), authorized the Comptroller of the Currency to appoint a receiver or

[31] Westerfield, *Money, Credit and Banking* (1938), p. 409, credits the Emergency Banking Act of March 9, 1933, with inventing the conservator as "a new method of handling banks in financial difficulty."

[32] The legislative history of the Home Owners' Loan Act throws no direct light on the issue of delegation of authority to the Board. See H. Rept. No. 55, 73rd Cong., 1st Sess.; S. Rept. No. 91, 73rd Cong., 1st Sess.; H. Rept. No. 210, 73rd Cong., 1st Sess. (Conference Report); H. Doc. No. 19, 73rd Cong., 1st Sess. (President's message).

conservator for any national bank or member bank of the Federal Reserve System which violated the requirement that such institutions have from five to twenty-five directors. The National Housing Act (Act of June 27, 1934, ch. 847, Sec. 406, 48 Stat. 1246, 1259, 12 U. S. C. 1729) empowered the Federal Savings and Loan Insurance Corporation to act as conservator or receiver for defaulting savings and loan associations and other insured institutions, and authorized the corporation, as such conservator or receiver "(1) to take over the assets of and operate such association, (2) to take such action as may be necessary to put it in a sound and solvent condition, (3) to merge it with another insured institution, (4) to organize a new Federal savings and loan association to take over its assets, or (5) to proceed to liquidate its assets in an orderly manner, whichever shall appear to be to the best interests of the insured members of the association in default * * *"[33]

[33] The National Housing Act of June 27, 1934, c. 847, Sec. 306, 48 Stat. 1246, 1255, 12 U. S. C. 1721, in setting up National Mortgage Associations, followed Section 5 (d) of the Home Owners' Loan Act of 1933 in providing that the Federal Housing Administration "shall have power to provide by rules and regulations for the liquidation, reorganization, consolidation, or merger of national mortgage associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, to require an equitable readjustment of its capital structure, to release it from the control of a conservator or receiver, and to permit its further operation."

(8) Thus: the term "conservator," both as used in day-to-day speech and by Congress in dealing with banking institutions, carries within itself criteria and guides for the appointment of such an official. Reading the normal connotation of the term together with recent Congressional use, it is not difficult to cull important factors which the Bank Administration should consider in determining the proper occasions for designation of a conservator: Violation by the association of basic provisions of statute or charter; need to conserve the institution's assets in order to protect shareholders and other creditors from loss; threat of insolvency; actual insolvency; unsound or unsafe operation leading to dissipation of assets or other injury to shareholders and creditors; incompetency, fraud, or recklessness of management. Such standards could hardly be deemed insufficient, especially to those familiar with the history and needs of mutual loan and building institutions. Cf. *American Power & Light Company* v. *Securities and Exchange Commission*, Nos. 4 and 5, this Term, decided November 25, 1946, slip opinion, p. 10; see *infra*, pp. 78–79, 81–84.

b. *Equity receivership doctrines:* A second source of direction for the Bank Administration in appointing conservators and receivers is found in the large body of judicial doctrine, substantially non-statutory in origin, developed by the courts, Federal and state, to govern the appointment of receivers, conservators, or liquidators. See 1

Clark, *A Treatise on the Law and Practice of Receivers*, (2d ed. 1929), Sec. 46 (a) (Court Appointing Receiver under General Equitable Powers), Sec. 46 (c) (Federal Courts' Inherent Power to Appoint), Sec. 49 (Rules Governing Appointment of Receiver), Sec. 53 (Appointment Discretionary with the Court); 2 Clark, *supra*, Sec. 702 (Federal Courts Appointing Receivers of Corporations), Sec. 747 (Grounds for Appointment of Receiver in Stockholders' Suits), Sec. 908 (Appointment of Receiver of Building and Loan Associations); cf. *Dodge v. Woolsey*, 18 How. 331, 341–344; *Buxrite Coal Co. v. Riggs*, 274 U. S. 208, 212. A statute which implicitly refers an administrator to such a well-developed body of common-law doctrine contains sufficiently precise standards and markers.[*] If Section 5 (d) had merely authorized the Bank Administration to apply to a court of competent jurisdiction for the appointment of a receiver or conservator, we have no doubt that neither appellees nor the District Court would have seen any constitutional objection.[**] No claim of unlawful delegation of

[*] In part, the Federal Trade Commission must draw upon the common law of unfair competition in determining what constitutes "unfair methods of competition." Cf. *Federal Trade Commission v. Gratz*, 253 U. S. 421; *Federal Trade Commission v. R. F. Keppel & Bro.*, 291 U. S. 304.

[**] Appellees suggested, in the lower court, that if Section 5 (d) were held unconstitutional the Bank Administration could and should apply to the District Court for the appointment of a receiver or conservator, if it was believed that Long Beach's officers were carrying on its affairs improperly (R. 648–649).

legislative power would have been made. But it should not taint the statute with invalidity that in this instance Congress vested the authority in an administrative official rather than a court. At the very least, the guides to action which would exist for a court would likewise be present to govern the administrator's order. Cf. *Intermountain Rate Cases*, 234 U. S. 476, 486–489 (transfer of rate authority from carriers to I. C. C.).

c. State rules on appointment of conservators: The state rules governing the appointment of receivers, conservators, or liquidators of state-regulated building and loan associations also provide an extensive and detailed system of guidance and control for the administrators of Section 5 (d). And Congress has expressly referred the Bank Administration to these state rules by its statutory direction that "primary consideration" is to be given "to the best practices of local mutual thrift and home-financing institutions in the United States." Section 5 (a). In many states, legislation designates the occasions upon which the state supervising official may take possession of an institution, or upon which he may apply for judicial appointment of a conservator, receiver, or liquidator; in others, judicial decisions—largely based on equity receivership doctrines—have elaborated the applicable rules. See *Sundheim, Law of Building and Loan Associations* (3rd ed., 1933), Secs. 190–191, and Appendix. There is a large

measure of agreement on the reasons which authorize ousting of the management of an association, although the statutory language may vary; and this uniformity of view is in itself the clearest sign of the constitutional adequacy of reference to the rules and practices governing local institutions. This reference designates the general policy and marks the general outlines of action; within that framework, the formulation of particular operative rules, the choice of language, and the selection of subsidiary standards is left to the Administration. But "it is no objection that the determination of facts and inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework." *Yakus* v. *United States,* 321 U. S. 414, 425.

A cumulative listing of various occasions sanctioned by state law for the vesting of control of a savings and loan association in a state official, receiver, or conservator will demonstrate that a general consensus exists, and that the Bank Administration's regulations fall squarely within this uniformity of view. Grounds for removal of the management and taking possession of an institution are:

(a) insolvency;
(b) impairment of capital;

(c) violation of charter, by-laws, or of law, by the institution; the institution is exceeding its statutory authority;

(d) the institution is conducting its business in an unauthorized or unsafe manner, or "in an unsafe or injurious manner such as to render its further proceeding hazardous to the public or to any or all of its investors"; the institution's affairs are in an "unsafe condition," or an "unsound or unsafe" condition; business is being conducted in a "fraudulent, illegal, discriminatory, or unsafe manner"; the institution is practicing deception on its members; the institution "cannot with safety and expediency continue business"; the institution's condition or methods of business are such as to render the continuation of its operations hazardous to the public or those having funds in its custody; it would be unsafe and inexpedient for the association to continue in business; its affairs are not being conducted for the best interests of its depositors, shareholders, or creditors;

(e) the institution has suspended payment of its obligations, or failed to pay them for a stated period;

(f) the institution has neglected or refused to comply with the terms of a duly issued order of the state supervisory official;

(g) the institution has refused to submit records and affairs for inspection and examination;

(h) an officer of the institution has refused to be examined under oath regarding its affairs.

See New York Banking Law, Sec. 606; Page's Ohio General Code Ann., Sec. 687; Deering's General Laws of the State of California, Act 986, Sec. 13.11; Gen. Laws, Mass., Chap. 167, Sec. 22; Chap. 170B; Jones' Ill. Stat. Ann., Sec. 14.40; *Bettle* v. *Republic Savings and Loan Assn.*, 63 N. J. Eq. 578 (Ct. Ch.) (N. J. Laws of 1899, p. 366); *Union Savings and Investment Co.* v. *District Court*, 44 Utah 397, 402 (Utah Act of 1907); *State ex rel. Tanner* v. *Northwestern Inv. Co.*, 70 Wash. 381; Sundheim, *supra*, Secs. 190–191 and Appendix.* Some of these statutes providing for appointment of conservators or similar officials go back to the latter part of the 19th century and the early years of the present century. During the 20th century there has been further elaboration; and by 1933, when the Home Owners' Loan Act was adopted, an entire corpus of law existed on this subject. Contemporaneous with the Home Owners' Loan Act, and since that time, there have been further changes and development of details. Thus, a definite group of standards, subsidiary policies, and rules has been and continues to be available to the Bank Administration. The con-

* The provisions of the New York, California, Massachusetts, and certain other state statutes are reprinted in Appendix C, *infra*, p. 120.

stitutional adequacy of these detailed standards is hardly open to question. They have been upheld by several state courts. See *People ex rel. Barrett* v. *The Logan County Bldg. & Loan Assn.*, 369 Ill. 518, 527–530; *Veix* v. *Seneca Bldg. and Loan Assn.*, 126 N. J. L. 314, 321–323; *State ex rel. Bettman* v. *Court of Common Pleas*, 124 Ohio St. 269.

The Administration has actually followed these state rules very closely, as a comparison of Section 206.1 of its Regulations (*infra*, pp. 111–112) with the foregoing resumé makes clear. Each of the ten reasons for the appointment of a receiver or conservator which is set out in Section 206.1 will be found, in substantially identical or very similar wording, in the list given above. In their entirety, the Bank Administration's list conforms very closely to the provisions of at least the New York, California, Indiana, and Massachusetts statutes.[37]

d. *Express statutory standards:* We have discussed the provisions of Section 5 (d) as if they stood alone, and have argued that in themselves they import sufficient standards for administrative action; but they "need not be tested in isolation. They derive much meaningful content from the purpose of the Act, its factual back-

[37] We have not attempted to collate the applicable law of all 48 states, and the Administration's regulations may also conform to the provisions of other state statutes. See Appendix C, *infra*, pp. 120–126.

ground, and the statutory context in which they appear." *American Power & Light Co.* v. *Securities and Exchange Commission,* this Term, Nos. 4 and 5, decided November 25, 1946, slip opinion, p. 10.

Section 5 of the Home Owners' Loan Act is an integrated statutory unit providing for the establishment of Federal savings and loan associations, and laying down certain specific rules for the government of these associations. Section 5 (a) provides that such associations shall be mutual thrift associations in which people may invest their funds, and in order to provide for the financing of homes; (b) provides the method by which an association shall raise its capital; (c) provides that it shall lend its funds only on first mortgages on homes, or combination of homes and business property in an amount in each case not to exceed $20,000, with certain designated exceptions; (d) provides for rules and regulations concerning reorganization, consolidation, merger, or liquidation; (e) provides that no charter shall be granted except to persons of good character and responsibility and only where in the board's judgment a necessity exists for the institution in the community and where there is a reasonable probability of its usefulness and success; (f) provides that each association upon its incorporation shall automatically become a member of the Federal Home Loan Bank in its

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district and shall qualify as such; (g) provides for subscriptions for preferred shares by the Secretary of the Treasury; (h) exempts the associations from taxation by the United States; (k) provides that an association shall act as a fiscal agent of the United States when designated by the Secretary of the Treasury; Section 6 appropriates public funds to carry out the purposes of the Act.

These individual provisions, separately and in their interrelationship, exhibit much evidence of legislative policy as to the government of these savings associations. In addition, several general policies are set forth in the section, or incorporated by reference, which inform and guide the use of all of the specific authorizations. In subsection (a), Congress first announced that the purpose of the establishment of these associations is the provision of "local mutual thrift institutions in which people may invest their funds," and secondly the Board is directed, in issuing charters for and in providing for the organization, incorporation, examination, operation and regulation of these associations, to give "primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States." Another general guide, contained in subsection (e), requires that charters be granted only to "persons of good character and responsibility," and only if "in the judgment of the Board a necessity exists for such an institution in the

community to be served" and "there is a reasonable probability of its usefulness and success."

Section 5 (f) requires each Federal savings and loan association to become a member of the Federal Home Loan Bank of its district, and to "qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members." These provisions incorporate the eligibility requirements set forth in Section 4 (a) of the Federal Home Loan Bank Act which foreclose from membership any institution if "its financial condition is such that advances may not safely be made to such institution or the character of its management or its home-financing policy is inconsistent with sound and economical home financing, or with the purposes of this Act." Similarly, the National Housing Act, adopted in June 1934, makes it mandatory for Federal associations to qualify for insurance by the Federal Savings and Loan Insurance Corporation. The requirements are unimpaired capital, safe financial policies and management, and a financial policy and management consistent with economical home financing and the purposes of that Act. These two provisions (concerning insurance by the Federal Savings and Loan Insurance Corporation and membership in the Federal Home Loan Bank) must be read as if directly incorporated into Section 5, not only because they impose requirements on Federal savings and loan associations and therefore establish Federal policy

as to their regulation, but also because, on the subject of Federal savings and loan associations; the acts are *in pari materia* in the strictest sense. *United States* v. *Stewart*, 311 U. S. 60, 64.

From these standards alone, a "veritable code of rules reveals itself" for the Bank Administration to follow in giving effect to Section 5 (d). Cf. *American Power & Light Co.* v. *Securities and Exchange Commission*, *supra*, slip opinion, p. 10. In appointing a conservator, these provisions direct that regard be had to (a) the "best practices" of State and local savings and loan associations, (b) the character and responsibility of the management of the association, (c) the usefulness and success of the association in its community, (d) the safety of the institution from the investor's point of view, (e) the consistency of the association's management and home-financing policy with sound and economical home financing, (f) the safety of the general financing condition, management, and policies, (g) actual or potential impairment of capital. Especially fruitful is the direction to consider the best practices of State and local mutual thrift and home-financing institutions. As we have shown above, *supra*, pp. 68–72, the State rules governing the appointment of receivers, conservators, and liquidators furnish a definite and rich source of guidance.

c. *Background of the Act; nature of savings and loan associations:* Finally, the norms which

control the Administration, in action under Section 5 (d), can be gathered from the reasons impelling the creation of Federal savings and loan associations, and the purposes Congress sought to accomplish. The Court will take judicial notice of matters within common knowledge, that at the time the Act was under consideration by Congress the building and loan industry had undergone financial debacles several times. The prevention of the recurrence of such a debacle, in so far as it was possible, and with it the wrecking of the Federal Home Loan Bank System, was one of the patent purposes of Congress in creating the Federal savings and loan system. Congress well knew, as all knew, that the creation of a sound savings and loan system demanded the elimination of questionable and unsafe practices: promotional real estate practices, inflated appraisals, speculative loans and unsound investments, use of the associations for the personal benefit of the management, haphazard supervision and other dangerous and unsafe practices. It was in the light of those facts that Congress enacted this law. It is in the light of this "history of the times when it was passed" that the Court must determine the "intent of Congress." *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 273; *Battfield* v. *Stranahan*, 192 U. S. 470, 494; *Ozawa* v. *United States*, 260 U. S. 178, 194; *Platt* v. *Union Pacific Railroad Co.*, 99 U. S. 48, 64.

Moreover, the nature of savings and loan associations, and the interests which have always been protected by the creating sovereign, reveal the purposes Congress sought to achieve, and the interests it desired to protect, by providing for the appointment of conservators and receivers. Building and loan associations are "quasi-public corporations, chartered to encourage thrift and promote the ownership of homes, with powers and immunities peculiarly their own." *Hopkins Federal Savings & Loan Assn.* v. *Cleary*, 296 U. S. 315, 328. They are "so organized as to attract the savings of persons of modest means. Confidence is essential to the stability and maintenance of these institutions." *People ex rel Barrett* v. *The Logan County Bldg. & Loan Assn.*, 369 Ill. 518, 525. There is a long history of governmental regulation of these associations, and it can fairly be said that the dominant purpose of such strict supervision has always been to protect the shareholders and other creditors against fraud, mismanagement, or injurious conduct, and to preserve the institutions in proper operating condition. The policy has been, as the New Jersey court summed it up, "to protect the activities and safety of building and loan associations," and "to safeguard the interests of those who deal with such associations" (*Veix* v. *Seneca Bldg. and Loan Assn.* 126 N. J. L. 314, 323); as this Court stated it: "* * * the state has a peculiar interest and a concomitant power of supervision and

regulation to prevent injury and loss to their members", and again in referring to the "public interest" which warrants regulation of these institutions, the Court defined it as "the legitimate end of conserving or equitably administering the assets in the interest of all members." *Treigle* v. *Acme Homestead Assn.*, 297 U. S. 189, 197–198. With respect to Federal savings and loan associations, there is an additional interest to be protected. The Government itself has a significant stake, through its instrumentality, the Federal Savings and Loan Insurance Corporation, which insures the accounts of Federal associations. Title IV of the National Housing Act. (Act of June 27, 1934, ch. 847, 12 U. S. C. 1724). The assets of these associations have to be protected from dissipation in order to conserve the Insurance Corporation's fund.

2. *Merger:* The lower court's strictures also condemn the power which Section 5 (d) grants the Administration to merge a Federal savings and loan association. We believe that the statute is equally immune from attack on this point, but we have confined our detailed argument to the portion of Section 5 (d) treating with appointment of a conservator or receiver, since that presents the only real constitutional issue in the case. The Bank Administration has not sought to merge Long Beach, and has indicated no intent to do so; the "threat" and "danger" of a merger which appellees claim to exist is a chimera of their own,

needlessly dragged into and through the litigation. We shall, however, outline the statutory standards controlling administrative action in this field.

There is no question but that Congress may provide for the dissolution of a corporation in the same Act in which it provides for its creation. The same guides which serve the administrative agency in the creation of such institutions may just as effectively serve it when the question of the advisability of their continuance comes before it. By Section 5 (a) Congress vested authority in the Board to create a Federal savings and loan association "in order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes", "giving primary consideration to the best practices of local mutual thrift and home-financing institutions;" subsection (e) adds, for the Board's consideration, the factors that the organizers and managers must be "persons of good character and responsibility", that "a necessity exists for such an institution in the community to be served," that "there is a reasonable probability of its usefulness and success," and that the institution can be established "without undue injury to properly conducted existing local thrift and home-financing institutions." By setting this pattern for association's existence, Congress has likewise established policies under which the Bank Administration may cause it to cease to exist, by merger, dissolution, or liquidation. As with ap-

pointment of a conservator, other sources of guidance are supplied by the "best practices" on merger of state building and loan associations, and the provisions of other federal statutes providing for merger of banking and financial institutions.

B. *The statutory standards are sufficient*

The course of this Court's decisions on delegation of legislative authority clearly supports the validity of Section 5 (d), and the sufficiency of its standards guiding administrative action.

1. We have urged that the policy governing appointment of a conservator is to be found, in large part, outside of the literal bounds of Section 5 (d); but even if scrutiny be severely confined to the express words of that provision, its validity must be sustained. As we have shown, *supra*, pp. 60–68, to those expert in the field, the term "conservator" itself imports an adequate policy controlling the Bank Administration, just as "interurban" and "bituminous," standing alone, are "wholly adequate as a standard for administrative action." *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 399; *Shields* v. *Utah Idaho Central R. Co.*, 305 U. S. 177, 180–183; cf. *Pittsburgh Plate Glass Co.* v. *Labor Board*, 313 U. S. 146, 165–166 (unit "appropriate" for collective bargaining). Similarly, this Court has upheld, against attack on the ground of improper delegation, Section 11 (k) of the Federal Reserve Act

which gives the Reserve Board, without prescribing any statutory standard as to when such action shall be taken, power "to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules and regulations as the said board may prescribe." (Act of December 23, 1913, 38 Stat. 251, 262, 12 U. S. C. 248 (k).) *First Nat. Bank* v. *Fellows ex rel. Union Trust Co.*, 244 U. S. 416, 421, 427.

2. Anything beyond the most restricted and literal reading of Section 5 (d) reveals guides to administrative action which are certainly more specific and definite than many another standard which this Court has upheld: "public interest" (*New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 24; *United States* v. *Chemical Foundation*, 272 U. S. 1; *Avent* v. *United States*, 266 U. S. 127); "public interest, convenience, or necessity" (*National Broadcasting Co.* v. *United States*, 319 U. S. 190, 225–226); "unreasonable obstruction to navigation" (*Union Bridge Co.* v. *United States*, 204 U. S. 364); "just and reasonable" for rate-making purposes (*Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420; *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 398); "undue preferences and unjust discriminations" (*Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 427); "reciprocally unequal and unreasonable" customs

duties (*Field* v. *Clark*, 143 U. S. 649); "unfair methods of competition" (*Federal Trade Commission* v. *Keppel & Bros.*, 291 U. S. 304, 312, 314); "primarily" or substantially (*Federal Reserve Board* v. *Agnew*, this Term, No. 66, decided January 6, 1947); "necessary for the national security or defense," as governing authority to take possession of and operate telegraph lines (*Dakota Central Tel. Co.* v. *South Dakota*, 250 U. S. 163). Just as the broad concept of "public interest" draws meaning from the "purpose of the Act, the requirements it imposes, and the context of the provision in question" (*New York Central Securities Corp.* v. *United States*, *supra*, at 24), as well as from the nature of the business regulated (*Federal Radio Comm.* v. *Nelson Bros. Co.*, 289 U. S. 266, 285; *Nat. Broadcasting Co.* v. *United States*, 319 U. S. 190, 225–226), so the connotations of the concept of a "conservator," the purposes of Section 5 and its other requirements, and the nature of mutual loan associations, all present the administrator with "ascertainable criteria" for appointment of a conservator.

3. The preferred construction of the present statute, as we have argued (*supra*, pp. 60–79), furnishes to the administrator not a single general guide (such as is provided by the statutes upheld in the foregoing cases), but a comprehensive listing of factors to be considered in regulating the appointment of a conservator. This Court has repeatedly upheld against the

charge of improper delegation, statutes specifying multiple factors to be weighed by administrators in taking designated action. *Hampton & Co.* v. *United States,* 276 U. S. 394; *Mulford* v. *Smith,* 307 U. S. 38, 48–49; *Currin* v. *Wallace,* 306 U. S. 1; *United States* v. *Rock Royal Cooperative,* 307 U. S. 533, 574–577; *Sunshine Coal Co.* v. *Adkins,* 310 U. S. 381, 399; *Opp Cotton Mills* v. *Administrator,* 312 U. S. 126; *Yakus* v. *United States,* 321 U. S. 414; *Bowles* v. *Willingham,* 321 U. S. 503; *American Power & Light Co.* v. *Securities and Exchange Commission,* Nos. 4 and 5, this Term, decided November 25, 1946. The administrator may also be authorized to consider unnamed "relevant factors," and may himself determine the respective weights attributable to each factor (*Hampton & Co.* v. *United States, supra; Opp Cotton Mills* v. *Administrator, supra; Yakus* v. *United States, supra*).

4. The three cases in which this Court has invalidated an act of Congress because of an unlawful delegation of legislative authority and on which the lower court relies (R. 377, 378) (*Schechter Corp.* v. *United States,* 295 U. S. 495; *Panama Refining Co.* v. *Ryan,* 293 U. S. 388; *Carter* v. *Carter Coal Co.,* 298 U. S. 238) are plainly distinguishable. Section 3 of the National Industrial Recovery Act, held invalid in the *Schechter* case, authorized the establishment of codes of

"fair" competition, "the nature of whose permissible provisions was left undefined" (see *Yakus* v. *United States, supra,* at 424), and this conferred virtually "unfettered discretion" in enacting laws for the government of trade and industry throughout the country (*Schechter* case, *supra,* at 537). Here, the administrative authority is limited to Federal savings and loans associations, and extends only to the precise subjects designated in Section 5 (d). Section 9 (c) of the National Industrial Recovery Act, contested in *Panama Refining Co.* v. *Ryan, supra,* defined the subject matter to which the President's authority extended (i. e., the prohibition of the transportation of petroleum); but, as the Court saw it, did not specify in any way, expressly or by implication, the occasion for the exercise of this authority. In the Court's view, the President had unlimited power to "lay down the prohibition, or not to lay it down, as he may see fit. And disobedience to his order is made a crime punishable by fine and imprisonment" (*id.* at 415). Here, as we have shown, the Bank Administration's authority is "canalized within banks that keep it from overflowing" (Cardozo, J., concurring in *Schechter Corp.* v. *United States, supra,* at 551), both by the narrow meaning of "conservator" and by its context in this and similar statutes. In *Carter* v. *Carter Coal Co.,* 298 U. S. 238, the Court condemned the provision

of the Bituminous Coal Conservation Act of 1935 authorizing the majority of coal producers and miners to fix wages on the ground that it constituted a delegation of legislative authority "to private persons" (*id.* at 311). Section 5 (d), on the other hand, vests all authority in public officials.

5. Federal savings and loan associations are Federal instrumentalities, quasi-public institutions created by the United States to fulfill a public purpose. *Waterbury Savings Bank* v. *Danaher*, 128 Conn. 78, 95–100; cf. *Knox Nat. Farm Loan Assn.* v. *Phillips*, 300 U. S. 194 (Federal farm loan associations); *Hopkins Federal Savings & Loan Assn.* v. *Cleary*, 296 U. S. 315, 328 (State building and loan associations).[*] It may well be that Congressional legislation regulating such public instrumentalities can validly allow broader discretion to the supervisory agency than would be proper for statutes governing private businesses. Of building and loan associations this Court has said: "We recognize that these associations, like banks and public service companies, are subject to a degree of regulation which would be unnecessary and unreasonable in the case of a purely private corporation." *Treigle* v. *Acme*

[*] The constitutional authority of Congress to create Federal savings and loan associations was upheld in *First Federal Savings and Loan Association of Wisconsin* v. *Loomis*, 97 F. 2d 831 (C. C. A. 7), certiorari granted, 305 U. S. 564, and dismissed on motion of petitioners, 305 U. S. 666, and is not raised by appellees (R. 633, 643).

Homestead Assn., 297 U. S. 189, 197. Accordingly, the cases involving contested Government regulation of the conduct of private business are not applicable here (cf. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113), and less strict standards for controlling administrative action ought to be required. Cf. *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304.

C. *An administrative hearing may properly be provided by regulation*

The District Court also held Section 5 (d) invalid because it does not, in terms, provide for notice and hearing (R. 377). But Section 5 (d) itself expressly authorizes the Bank Administration to adopt rules and regulations governing appointment of a conservator. Pursuant to this authority the Administration promulgated a regulation providing for an administrative hearing, and no one has asserted that such a regulation was not a lawful exercise of the Administration's statutory authority. Since the regulation was authorized by the statute, it has the effect of a law.

The regulation is Section 206.2 (quoted *infra*, pp. 114–115), which fully establishes procedure for an administrative hearing at the request of the board of directors of an association, within fourteen days after the appointment of a conservator or receiver. Such a hearing was formally requested here by the Association's board

(R. 92), and the Bank Administration was entirely willing to grant it,[39] but was prevented by the judicial intervention of the lower court, acting on appellees' motion (R. 244).

There is plain error in a holding that the statute must itself provide for notice and hearing. The statutes authorizing the Comptroller of the Currency to appoint receivers and conservators of national banks do not so provide. Act of June 30, 1876, 19 Stat. 63 (12 U. S. C. 191); R. S. 5234, as amended, 12 U. S. C. 192; Bank Conservation Act, Sec. 203, 48 Stat. 2, 12 U. S. C. 203. If a hearing is constitutionally necessary (but cf. *Bushnell* v. *Leland*, 164 U. S. 684; *State Savings & Commercial Bank* v. *Anderson*, 238 U. S. 611, affirming 165 Cal. 437), its provision by regulation is sufficient to satisfy all of appellees' rights. Section 5 (d) clearly authorizes the Bank Administration to provide in its rules and regulations for a hearing, and such a hearing was offered to the Association, and to any other interested person, partnership, association, or corporation (R. 95). Appellees were thus tendered "everything which the Constitution could possibly guarantee them in this respect," and they are not adversely affected by any omission in the statute to direct a hearing. *American Power & Light Company* v. *Securities and Exchange Commission*, Nos. 4 and 5, this

[39] The hearing was actually set for July 3, 1946, at Los Angeles, California (R. 95).

Term, decided November 25, 1946, slip opinion, pp. 12–14.[40]

That the right to a hearing accrued only after the appointment of the Conservator does not deprive appellees of due process. *Yakus* v. *United States*, 321 U. S. 414, 436, 442; *Bowles* v. *Willingham*, 321 U. S. 503, 519–520; *Utley* v. *St. Petersburg*, 292 U. S. 106, 109–110; *Phillips* v. *Commissioner*, 283 U. S. 589, 596–597. A favorable administrative determination leads to immediate return of the old management to control of the Association; temporary management of an association by a conservator is hardly likely to inflict irreparable harm on an association, or its owners. As with wartime price control, there are special reasons for prompt and immediate appointment of a conservator without prior hearing. The delicate balance of a financial institution, its reputation and its community usefulness, can be immeasurably harmed by a hearing at which a Government agency is forced to claim improper or unsafe action by the institution's management which remains in control during the hearing. Moreover, the speedy intervention of a conservator may be necessary to prevent continued improper or unsound practices by the management

[40] The Government does not question the right of the Association to secure appropriate judicial review, after completion of the administrative hearing, of the order appointing a conservator. Cf. *Stark* v. *Wickard*, 321 U. S. 288; *Federal Reserve Board* v. *Agnew*, No. 66, this Term, decided January 6, 1947; Administrative Procedure Act, Public Law No. 404, 79th Cong., 2d Sess., c. 324, approved June 11, 1946, Section 10.

from irreparably damaging the institution and its shareholders. It is for these reasons that some twenty-five States have provided for the appointment of a receiver, conservator, or similar official, without prior hearing or litigation. (See Appendix C, *infra*, for specimen statutes.)

III

THE DISTRICT COURT ERRED IN ENTERING A FINAL JUDGMENT

Little discussion is necessary to show that the District Court erred in entering a final judgment. A mere statement of the steps taken in the case will indicate the impropriety of issuing a sweeping permanent decree of the type entered by the three-judge court. See *supra*, pp. 14–15. A complaint was filed praying for ouster of the conservator, for permanent injunctions and for other relief (R. 1–17). The original plaintiffs, joined by certain of the other appellees, then filed motions for *preliminary* injunctions restraining appellants from (a) merging Long Beach (R. 21, 67), and (b) holding an administrative hearing on the conservator's appointment (R. 98). Appellee Long Beach, with the concurrence of the original plaintiffs (R. 69), then moved "that plaintiffs' motion for a preliminary injunction restraining and enjoining the defendants from various acts be heard by the Honorable Court upon oral testimony in Court of witnesses to be produced and subpoenaed

to attend said hearing" (R. 77). A motion to dismiss the original complaint was filed by defendant-appellant Ammann (R. 82); a motion to dismiss or to quash return of service, on the ground that he could not be sued within the district and had not been properly served, was filed by defendant-appellant Fahey (R. 260). The case was set for hearing by a three-judge court on all these motions (R. 232) and argued by counsel (R. 607, 625, 650, 704); no oral testimony was taken nor documentary or written evidence introduced on any phase of the case at that time. The three-judge court held, in a written opinion (filed September 5, 1946) that Section 5 (d) of the Home Owners Loan Act of 1933, as amended, was "unconstitutional and void as attempting to delegate legislative power to the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act," and it directed that "judgment be entered in accordance with this opinion" (R. 378).

Without further hearing or trial, and without any further pleadings, the three-judge court thereafter entered, over appellants' protest (R. 424–433), a sweeping final judgment denying the appellants' motions, and granting all of the permanent relief prayed for in the complaint (R. 496).[41] The defendant-appellants had not elected to stand on

[41] The court denied the appellees' motion to take oral testimony and evidence at the hearing on the motion for preliminary injunctions (R. 492).

their motions; nor were they in default in answering the complaint."[42] No answer had been filed; and no motion for judgment on the pleadings or for summary judgment had been made. Appellees had not at any time moved to oust the conservator, and their only pending motions were for *preliminary* injunctions against merger and to restrain the holding of an administrative hearing. Nevertheless, the court's decree (a) ordered Ammann's removal, (b) *permanently* restrained appellants from merging the Association, (c) *permanently* enjoined appellants from holding an administrative hearing, (d) restored the original officers to control of the Association; (e) ordered appellants to account for all transactions occurring during their control of the Association, (f) *permanently* enjoined appellants "from ever asserting any claims, right, title, or interest in or to said property, or any of it," and (g) ordered appellants "to do and perform such acts as are necessary or expedient to carry out the provisions" of the decree. The last paragraph of the decree "reserve[s] to the District Court the right to make such other and further orders herein as shall hereafter be necessary to determine collateral

[42] On September 9, 1946, the lower court entered an order extending the time for all parties to plead to a date "20 days after the entry of the Order or Judgment upon the Opinion of the court heretofore filed" (R. 379).

issues hereto and to give to this Decree full force and effect" (R. 499–500).

This decree is undoubtedly a final one, granting to appellees all the relief for which they prayed in their complaints. By the court's precipitate action, "the whole purpose of the suit has been accomplished * * * and nothing now remains to be done but to carry what has been decreed into execution." *Winthrop Iron Co.* v. *Meeker,* 109 U. S. 180, 183. "And when the decree decides the right to the property in contest, and directs it to be delivered by the defendant to the complainant * * * and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent * * *." *Forgay* v. *Conrad,* 6 How. 204, quoted with approval in *Winthrop Iron Co.* v. *Meeker; supra,* at 183. Cf. *Gulf Refining Co.* v. *United States,* 269 U. S. 125, 136; *Knox National Farm Loan Assn.* v. *Phillips,* 300 U. S. 194, 197–198. The last paragraph of the decree, quoted above, demonstrates the finality with which the District Court itself viewed the judgment.

The District Court was obviously without authority to enter such a final decree on behalf of the plaintiffs, before answer and merely upon the denial of defendants' motion to dismiss. *Re Sanford Fork & Tool Co.,* 160 U. S. 247, 257–258; *Wm. J. Friday & Co.* v. *United States,* 61 F. 2d 370,

373 (C. C. A. 3). The *Sanford Fork* case involved a court's entering of a final decree after overruling of exceptions to an answer, under the old equity practice. The principle there announced by this Court is precisely applicable, *mutatis mutandis*, to the instant denial of defendants' motions to dismiss (pp. 257–258):

> But when the matter set down for hearing is the plaintiff's exceptions to the answer, the case is not ripe for final decree; the only question to be decided is the sufficiency of the answer; and no final decree can be entered against either party, unless it declines or omits to plead further.
>
> The Circuit Court, upon sustaining the exceptions, could not (unless the defendants chose to stand by their answer) enter a final decree against the defendants; or do anything more than order them to put in a full and complete answer, on pain of being held to have confessed the bill. If the Circuit Court, instead of sustaining the exceptions to the answer, had overruled those exceptions, the plaintiffs would have had the right to file a replication, and the bill could not be dismissed unless and until they neglected to file one.

The result of the District Court's action is that, contrary to all canons of orderly judicial procedure, a final decree had been entered simul-

taneously with the denial of a motion to dismiss, when time to plead had not expired, when there was no default, without giving the defendants an opportunity to answer, without an election by defendants to stand on their motions, without a trial on the facts, and without any motion by plaintiffs for judgment.

IV

THE INTERPLEADERS AND CROSS-CLAIMS OF APPELLEES TITLE SERVICE COMPANY AND WALLIS, AND THE THIRD PARTY COMPLAINT AGAINST THE FEDERAL HOME LOAN BANKS, WERE ERRONEOUSLY ALLOWED

A. The interpleaders and cross-claims of appellees Title Service Company and Wallis should not have been allowed to be interposed, since neither is maintainable under the Federal interpleader provisions or general equity practice.

1. The Title Service Company, which is controlled by substantially the same persons who constituted Long Beach's old management (R. cf. R. 522), deposited 174 notes and deeds of trust in the registry of the court (*supra*, pp. 9–10), and prayed that appellants and the appellee Association be required to litigate their conflicting claims to said deeds of trust. On the basis of this purported interpleader, the Company then proceeded to make virtually the same allegations of unlawful action against appellants as the original plaintiff and the Association have done

(R. 30–39), and throughout the litigation Title Service Company has vehemently supported, if it did not initiate, every action and position taken against or in opposition to appellants Fahey and Ammann. Its position in the action, now and at all times, has been indistinguishable from that of the original plaintiffs and of the Association, and Title Service may fairly be called those major parties' faithful shadow.[43]

In reality, there is no dispute as to the property deposited with the court. All agree that the Association is the beneficiary in all the trust deeds, that the right to reconveyance upon payment in full rests with the trustors, that the Association has full right to the money represented by the notes. The only basis claimed for interpleader is that Title Service Company was in doubt whether it should reconvey the property at the request of the Conservator, the legality of whose status was not clear. This asserted difficulty was easily obviated, in the court below, by duplicate instructions to Title Service Company from the Conservator and the former management (R. 320).[44] This slim basis cannot be used,

[43] Formerly, interpleading parties were required to file affidavits that they were not acting in collusion with the other parties. See 2 Moore and Friedman, Moore's Federal Practice, p. 2196.

[44] Home Investment Company paid over some $800,000 into the court's registry, and secured the reconveyances (R. 319–326).

either under the Interpleader Act of 1936 (Judicial Code, Section 24 (26), 28 U. S. C. 41 (26)) or Rule 22 (1) of the Federal Rules of Civil Procedure, to launch a broadside attack against the constitutionality of Section 5 (d) of the Home Owners' Loan Act, with which Title Service Company is in no way concerned and which it has no standing to contest.[15] Except in so far as its interpleader sought disposition of the 174 deeds, notes, and requests for reconveyances—and, with consent of all parties, that has already occurred—the Company's cross-claim was entirely improper and should have been dismissed. It's sole purpose was to attempt to prosecute a claim which was of no concern to the Company, and to try to use the interpleader device to secure jurisdiction over appellant Fahey.

2. Similarly, Wallis' interpleader, based on his deposit of a $50,000 check, should not have been allowed. Wallis, too, appears as an *alter ego* of the shareholder plaintiffs and the Association, and concurs wholly in their attacks upon Section

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[15] As Conservator, Ammann is undoubtedly a public officer appointed under at least apparent authority granted by Congress, and is therefore a *de facto* officer whose acts are binding on third parties, such as Title Service Company, regardless of the statute's constitutionality. *Cocke* v. *Halsey*, 16 Pet. 71, 87; *Waite* v. *Santa Cruz*, 184 U. S. 302; *United States ex rel Doss* v. *Lindsley*, 148 F. 2d 22 (C. C. A. 7), certiorari denied, 325 U. S. 835.

5 (d), and the appellants' authority (R. 54–63). As an attorney for the Association, in which capacity he received the check to further its litigation against the Bank Administration, he has no standing to attack Section 5 (d) and no litigable interest in the Conservator's appointment. The only possible controversy as to the proceeds of the check is between Wallis and the Conservator, since the Association's old management does not contest Wallis' right to the proceeds (R. 192–195); accordingly, the multiple claims on which interpleader must rest do not exist here. See Rule 22 (1); Judicial Code, Section 24 (26). Furthermore, since Wallis claims the proceeds of the check as his own (R. 60–61), he does not exhibit the disinterestedness normally required of the interpleading party. *Treinies* v. *Sunshine Mining Co.*, 308 U. S. 66, 72; *Sanders* v. *Fertilizer Works*, 292 U. S. 190, 200; *Groves* v. *Sentell*, 153 U. S. 465, 485; *Killian* v. *Ebbinghaus*, 110 U. S. 568, 571.[46] He, too, is using interpleader as a device to add his attack on Section 5 (d).

3. Attempt was made to secure jurisdiction over appellant Fahey by service in the District of Columbia under Judicial Code, Section 24 (26), 28

[46] Moreover, Wallis and Long Beach are both citizens of California, and it is doubtful whether Judicial Code, Section 24 (26) applies where such adverse claimants are citizens of the same state.

U. S. C. 41 (26), but since, as we have shown, neither interpleader was warranted by that statute, it did not validate service outside of California. Cf. *Robertson* v. *Railway Labor Board*, 268 U. S. 619; *Employers Reinsurance Corp.* v. *Bryant*, 299 U. S. 374, 377.

B. The third-party complaint of the Association against the Federal Home Loan Banks of Los Angeles, Portland, and San Francisco (R. 222) was purportedly filed under Rule 14 (a) of the Federal Rules, which provides for a defendant's serving such third-party pleading "upon a person not a party to the action who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against him." But it requires only a glance at the pleadings to show that the cause of action attempted to be stated in the third-party complaint is utterly foreign to the subject matter of the complaint in the main action; that it seeks relief in no way involved in the relief sought in the main action; that in the main action no real relief is sought against Long Beach; that there is not and cannot be liability to Long Beach or to the shareholder plaintiffs for all or any part of the shareholders' claim against the Association. The complaint in the main action sought primarily the removal of the Conservator appointed for the Association, and no relief was sought against the Association itself. The third-

party complaint filed by the Association asked primarily for a declaratory judgment as to the status of the former Federal Home Loan Bank of Los Angeles, of the former Federal Home Loan Bank of Portland and of the Federal Home Loan Bank of San Francisco, the first two of which had been merged into the last under the authority of the Federal Home Loan Bank Act.[47] There is no connection between that merger and the appointment of the Conservator for Long Beach (R. 290–295), and no part of the plaintiffs' claim against Long Beach concerns or involves the Federal Home Loan Bank merger. The third-party complaint should not have been permitted.

CONCLUSION

We believe that, for the foregoing reasons, the District Court erred in granting judgment against the Government. However, the number and interrelationship of the issues presented to this Court makes the disposition of the case, if appellants should succeed, a matter of some complexity. In aid of the Court's deliberations, we suggest the following as the proper disposition of the case should appellants prevail on any or all of the issues: (1) The District Court should be re-

[47] There appears to have been some confusion in the court below as to the statutes involved, and some failure to recognize that the Home Owners' Loan Act is not the Federal Home Loan Bank Act. The opinion of the lower court referred first to one and then to the other as if they were the

versed, and the entire action ordered dismissed because of failure to exhaust administrative remedies; (2) if the doctrine of exhaustion is held inapplicable where a constitutional issue is raised, all appellees should be held estopped or without standing to contest the constitutionality of Section 5 (d), and the exhaustion doctrine, as well as the defense of indispensability of defendant Fahey, applied to dismiss the remaining phase of the case, i. e., the arbitrariness of the Conservator's appointment as a matter of administrative action; (3) if the doctrine of exhaustion is held inapplicable only to constitutional issues, but the Act held constitutional, the entire action should be ordered dismissed on the ground that appellees have failed to exhaust administrative remedies on the only other issue raised by the complaint; (4) if the exhaustion, estoppel, and indispensability-of-parties doctrines are all held inapplicable, Section 5 (d) should be held constitutional and the District Court's entry of final decree erroneous, and the District Court's judgment reversed and the cause remanded to the District Court for such further proceedings on the administrative phase as may be proper; (5) if the other defenses are inapplicable and if Section 5 (d) should be held unconstitutional, as a matter of orderly procedure the cause should be remanded for proper opportunity for defense before entry of a final decree,

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same (R. 374, 376, 378). It condemns one because of action taken under the other (R. 377).

the cross-claims and third-party complaints ordered dismissed on procedural grounds, and personal relief against appellant Fahey set aside.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.
JOHN F. SONNETT,
Assistant Attorney General.
ROBERT L. STERN,
Special Assistant to the Attorney General.
PAUL A. SWEENEY,
OSCAR H. DAVIS,
Attorneys.
KENNETH G. HEISLER,
General Counsel,
RAY E. DOUGHERTY,
Associate General Counsel,
MOSE SILVERMAN,
Attorney,
Federal Home Loan Bank Administration.

APRIL 1947.

APPENDIX A

1. The provisions of Section 5 of the Home Owners' Loan Act of 1933, as amended, 48 Stat. 128, 132, 12 U. S. C. 1461, 1464 (Act of June 13, 1933, 48 Stat. 132, as amended by the Act of April 27, 1934, 48 Stat. 645; the Act of May 28, 1935, 49 Stat. 297, and the Act of Aug. 10, 1939, 53 Stat. 1402), are as follows:

> SEC. 5. (a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations", and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.
>
> (b) Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is therein provided. No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board.
>
> (c) Such associations shall lend their funds only on the security of their shares or on the security of first liens upon homes or combination of homes and business property within fifty miles of their home office:

Provided, That not more than $20,000 shall be loaned on the security of a first lien upon any one such property; except that not exceeding 15 per centum of the assets of such association may be loaned on other improved real estate without regard to said $20,000 limitation, and without regard to said fifty-mile limit, but secured by first lien thereon: *And provided further,* That any portion of the assets of such associations may be invested in obligations of the United States or the stock or bonds of a Federal Home Loan Bank: *And provided further,* That any such association which is converted from a State-chartered institution may continue to make loans in the territory in which it made loans while operating under State charter.

(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

(e) No charter shall be granted except to persons of good character and responsibility, nor unless in the judgment of the Board a necessity exists for such an institution in the community to be served, nor unless there is a reasonable probability of its usefulness and success, nor unless the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions.

(f) Each such association, upon its incorporation, shall become automatically a

member of the Federal Home Loan Bank of the district in which it is located, or if convenience shall require and the Board approve, shall become a member of a Federal Home Loan Bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

(g) The Secretary of the Treasury is authorized on behalf of the United States to subscribe for preferred shares in such associations—which shall be preferred as to the assets of the association and which shall be entitled to a dividend, if earned, after payment of expenses and provision for reasonable reserves, to the same extent as other shareholders. It shall be the duty of the Secretary of the Treasury to subscribe for such preferred shares upon the request of the Board; but the subscription by him to the shares of any one association shall not exceed $100,000, and no such subscription shall be called for unless in the judgment of the Board the funds are necessary for the encouragement of local home financing in the community to be served and for the reasonable financing of homes in such community. Payment on such shares may be called from time to time by the association, subject to the approval of the Board and the Secretary of the Treasury; but the amount paid in by the Secretary of the Treasury shall at no time exceed the amount paid in by all other shareholders, and the aggregate amount of shares held by the Secretary of the Treasury shall not exceed at any time the aggregate amount of shares held by all other shareholders. To enable the Secretary of the Treasury to make such subscriptions when

called there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000, to be immediately available and to remain available until expended. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by the Board, and such receipts shall be evidence of the interest of the United States in such preferred shares to the extent of the amount so paid. Each such association shall make provision for the retirement of its preferred shares held by the Secretary of the Treasury, and beginning at the expiration of five years from the time of the investment in such shares, the association shall set aside one third of the receipts from its investing and borrowing shareholders to be used for the purpose of such retirement. In case of the liquidation of any such association the shares held by the Secretary of the Treasury shall be retired at par before any payments are made to other shareholders.

(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of the Internal Revenue Code with respect to wages paid after December 31, 1939, for employment after such date), and all shares of such associations shall be exempt both as to their value and the income therefrom all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such

associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

(i) Any member of a Federal Home Loan Bank may convert itself into a Federal savings and loan association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

(j) In addition to the authority to subscribe for preferred shares in Federal savings and loan associations, the Secretary of the Treasury is authorized on behalf of the United States to subscribe for any amount of full paid income shares in such associations, and it shall be the duty of the Secretary of the Treasury to subscribe for such full paid income shares upon the request of the Federal Home Loan Bank Board. Payment on such shares may be called from time to time by the association, subject to the approval of said Board and the Secretary of the Treasury, and such payments shall be made from the funds appropriated pursuant to subsection (g) of this section; but the amount paid in by the Secretary of the Treasury for shares under this subsection and such subsection (g), together shall at no time exceed 75 per centum of the total investment in the shares of such association by the

Secretary of the Treasury and other shareholders. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by said Board and such receipts shall be evidence of the interest of the United States in such full paid income shares to the extent of the amount so paid. No request for the repurchase of the full paid income shares purchased by the Secretary of the Treasury shall be made for a period of five years from the date of such purchase, and thereafter requests by the Secretary of the Treasury for the repurchase of such shares by such associations shall be made at the discretion of the Board; but no such association shall be requested to repurchase any such shares in any one year in an amount in excess of 10 per centum of the total amount invested in such shares by the Secretary of the Treasury. Such repurchases shall be made in accordance with the rules and regulations prescribed by the Board for such associations.

(k) When designated for that purpose by the Secretary of the Treasury, any Federal savings and loan association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal savings and loan association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States.

SEC. 6. To enable the Board to encourage local thrift and local home financing and to promote, organize, and develop the associations herein provided for or similar associations organized under local laws, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $150,000, to be immediately available and remain available until expended, subject to the call of the Board, which sum, or so much thereof as may be necessary, the Board is authorized to use in its discretion for the accomplishment of the purposes of this section without regard to the provisions of any other law governing the expenditure of public funds. For the purposes of this section the Secretary of the Treasury is authorized and directed to allocate and make immediately available to the Board, out of the funds appropriated pursuant to section 5 (g), the sum of $700,000. Such sum shall be in addition to the funds appropriated pursuant to this section, and shall be subject to the call of the Board and shall remain available until expended. The sums appropriated and made available pursuant to this section shall be used impartially in the promotion and development of local thrift and home-financing institutions, whether State or Federally chartered.

SEC. 7. The provisions of this Act shall apply to the continental United States, to the Territories of Alaska and Hawaii, and to Puerto Rico and the Virgin Islands.

2. The Federal Home Loan Bank Act, 47 Stat. 725, 12 U. S. C. 1424, provides in pertinent part as follows:

SEC. 4. (a) * * * No institution shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if, in the judgment of the board, its financial condition is such that advances may not safely be made to such institution or the character of its management or its home-financing policy is inconsistent with sound and economical home financing, or with the purposes of this Act.

SEC. 5. No institution shall be admitted to or retained in membership, or granted the privileges of nonmember borrowers, if the combined total of the amounts paid to it for interest, commission, bonus, discount, premium, and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, creates an actual net cost to the home owner in excess of the maximum legal rate of interest or, in case there is a lawful contract rate of interest applicable to such transactions, in excess of such rate (regardless of any exemption from usury laws), or, in case there is no legal rate of interest or lawful contract rate of interest applicable to such transactions, in excess of 8 per centum per annum in the State where such property is located. This section applies only to home mortgage loans made after the enactment of this Act.

3. The National Housing Act, 48 Stat. 1246, 12 U. S. C. 1724, as amended, provides in pertinent part as follows:

SEC. 403. (a) It shall be the duty of the Corporation to insure the accounts of all Federal savings and loan associations, and it may insure the accounts of building and loan, savings and loan, and homestead associations and cooperative banks organized

and operated according to the laws of the State, District, or Territory in which they are chartered or organized.

(b) Application for such insurance shall be made immediately by each Federal savings and loan association, and may be made at any time by other eligible institutions.

* * *

(c) The Corporation shall reject the application of any applicant if it finds that the capital of the applicant is impaired or that its financial policies or management are unsafe; and the Corporation may reject the application of any applicant if it finds that the character of the management of the applicant or its home financing policy is inconsistent with economical home financing or with the purposes of this title. Upon the approval of any application for insurance the Corporation shall notify the applicant, and upon the payment of the initial premium charge for such insurance, as provided in section 404, the Corporation shall issue to the applicant a certificate stating that it has become an insured institution. In considering applications for such insurance the Corporation shall give full consideration to all factors in connection with the financial condition of applicants and insured institutions, and shall have power to make such adjustments in their financial statements as the Corporation finds to be necessary.

4. The Rules and Regulations for the Federal Savings and Loan System provide in part as follows:

PART 206. APPOINTMENT OF CONSERVATOR OR RECEIVER

206.1 RECEIVER OR CONSERVATOR. APPOINTMENT. Whenever, in

the opinion of the Federal Home Loan Bank Administration, any Federal savings and loan association:

(1) is conducting its business in an unlawful, unauthorized, or unsafe manner;

(2) is in an unsound or unsafe condition, or has a management which is unsafe or unfit to manage a Federal savings and loan association;

(3) cannot with safety continue in business;

(4) is impaired in that its assets do not have an aggregate value (in the judgment of the Federal Home Loan Bank Administration) at least equal to the aggregate amount of its liabilities to its creditors, members, and all other persons;

(5) is in imminent danger of becoming impaired;

(6) is pursuing a course that is jeopardizing or injurious to the interests of its members, creditors, or the public;

(7) has suspended payment of its obligations;

(8) has refused to submit its books, papers, records, or affairs for inspection to any examiner or lawful agent appointed by the Federal Home Loan Bank Administration;

(9) has refused by the refusal of any of its officers, directors, or employees to be examined upon oath by the Federal Home Loan Bank Administration or its representative concerning its affairs; or

(10) has refused or failed to observe a lawful order of the Federal Home Loan Bank administration,

the Federal Home Loan Bank Administration may appoint the Federal Savings and Loan Insurance Corporation receiver for such Federal association which appoint-

ment shall be for the purpose of liquidation, or the Federal Home Loan Bank Administration may appoint a conservator for such Federal association to conserve the assets of the association pending further disposition of its affairs. The appointment shall be by order, which order shall state on which of the above causes the appointment is based. Any conservator so appointed shall furnish bond for himself and his employees, in form and amount and with surety acceptable to the Governor of the Federal Home Loan Bank System, or any deputy or Assistant Governor, but no bond shall be required of the Federal Savings and Loan Insurance Corporation as receiver. The conservator or receiver shall forthwith upon appointment take possession of the association and, at the time such conservator or receiver shall demand possession, such conservator or receiver shall notify the officer or employee of the association, if any, who shall be in the home office of the association and appear to be in charge of such office, of the action of the Federal Home Loan Bank Administration. The Secretary of the Federal Home Loan Bank Administration shall, forthwith upon adoption thereof, mail a certified copy of the order of appointment to the address of the association as it shall appear on the records of the Federal Home Loan Bank Administration and to each director of the association, known by the Secretary to be such, at the last address of each as the same shall appear on the records of the Federal Home Loan Bank Administration. If such certified copy of the order appointing the

206.2 HEARING ON APPOINTMENT. Within fourteen days (Sundays and holidays included) after the appointment of a conservator or receiver for a Federal association not at the time of such appointment in the hands of a conservator, such Federal association, which has not, by its board of directors, consented to or requested the appointment of a conservator or receiver, may file an answer and serve a written demand for a hearing, authorized by its board of directors, which demand shall state the address to which notice of hearing shall be sent. Upon receipt of such answer and written demand for a hearing the Federal Home Loan Bank Administration shall issue and serve a notice of hearing upon the institution by mailing a copy of the order of hearing to the address stated in the demand therefor and shall conduct a hearing, at which time and place the Federal association may appear and show cause why the conservator or receiver should not have been appointed and why an order should be entered by the Federal Home Loan Bank Administration discharging the conservator or receiver. Such hearing shall be held either in the district of the Federal Home Loan Bank of which such Federal association is a member or in Washington, D. C., as the Federal Home Loan Bank Administration shall determine, unless the association otherwise consents in writing. Such hearing may be held before the Federal Home Loan Bank Commissioner or before a trial examiner or hearing officer, as the Federal Home Loan Bank Administration shall determine. Such Federal association,

which has not, by its board of directors, consented to or requested the appointment of a conservator or receiver, may, within seven days (Sundays and holidays included) of such appointment, serve a written or telegraphic demand, authorized by its board of directors, upon the Federal Home Loan Bank Administration for a more definite statement of the cause or causes for the action. The time of service upon the Federal Home Loan Bank Administration for the purposes of this Section shall be the time of receipt by the Secretary of the Federal Home Loan Bank Administration.

206.3 COSTS OF HEARINGS. Costs, as determined by the Federal Home Loan Bank Administration, of hearings held pursuant to section 206.2 may be assessed against the association demanding the same upon the order of the Federal Home Loan Bank Administration unless the Federal Home Loan Bank Administration finds upon such hearing that there is no cause for the appointment of a conservator or receiver.

206.4 DISCHARGE OF CONSERVATOR OR RECEIVER. An order of the Federal Home Loan Bank Administration discharging a conservator and returning the association to its management shall restore to such Federal association all its rights, powers and privileges and shall restore the rights, powers and privileges of its officers and directors, all as of the time specified in such order, except as such order may otherwise provide. An order of the Federal Home Loan Bank Administration discharging a receiver and returning the association to its management shall by operation of law and without any conveyance or other instrument, act or deed, restore to such Federal

association all its rights, powers and privileges, revest in such Federal association the title to all its property, and restore the rights, powers and privileges of its officers and directors, all as of the time specified in such order, except as such order may otherwise provide.

APPENDIX B

Executive Order No. 9070, February 24, 1942; 7 F. R. 1529, 1 CFR, Cum. Supp., p. 1095 provides in part as follows:

CONSOLIDATING THE HOUSING AGENCIES AND FUNCTIONS OF THE GOVERNMENT INTO THE NATIONAL HOUSING AGENCY

By virtue of the authority vested in me by Title I of the First War Powers Act, 1941, approved December 18, 1941 (Public Law 354, 77th Congress), and as President of the United States, it is hereby ordered as follows:

1. The following agencies, functions, duties, and powers are consolidated into a National Housing Agency and shall be administered as hereinafter provided under the direction and supervision of a National Housing Administrator:

* * * * * *

(b) All functions, powers, and duties of the Federal Home Loan Bank Board and of its members.

* * * * * *

(d) The Federal Savings and Loan Insurance Corporation and the functions, powers, and duties of its Board of Trustees.

* * * * * *

2. The National Housing Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive a salary of $12,000 a year unless the Congress shall otherwise provide. Pending such appointment, an existing officer of the Government desig-

nated by the President shall act as National Housing Administrator.

3. There shall be three main constitutent units in the National Housing Agency. Each such unit shall be administered by a commissioner acting under the direction and supervision of the National Housing Administrator. * * * The unit administering the functions, powers, and duties of the Federal Home Loan Bank Board and its members shall be known as the Federal Home Loan Bank Administration, and the Chairman of the Federal Home Loan Bank Board shall serve as Federal Home Loan Bank Commissioner. * * * The agencies, functions, powers, and duties enumerated in sub-paragraphs (c), (d), and (k) of paragraph 1 shall be administered in the Federal Home Loan Bank Administration, * * *

* * * * *

13. Nothing herein shall impair or affect any outstanding obligations or contracts of any agency consolidated hereunder or of the United States of America (including its pledge of faith to the payment of all annual contributions now or hereafter contracted for pursuant to the United States Housing Act, as amended), or of any Insurance Funds created under the National Housing Act.

14. All orders, rules, regulations, permits, or other privileges made, issued or granted by or in respect of any agency, function, power, or duty consolidated hereunder shall continue in effect to the same extent as if such consolidation had not occurred until modified, superseded, or repealed, except that the regulations of January 11, 1941, relating to defense housing

coordination shall hereby be revoked upon the appointment or designation of the National Housing Administrator.

* * * * * *

17. This order shall become effective as of the date hereof and shall be in force and effect so long as Title I of the First War Powers Act, 1941, remains in force.

APPENDIX C

1. New York. *Banking Law, Section 606* (*McKinney's Consolidated Laws of New York Annotated,* Book 4, Section 606) provides in part as follows:

> 1. The superintendent may, in his discretion, forthwith take possession of the business and property of any banking organization whenever it shall appear that such banking organization;
>
> (a) Has violated any law;
>
> (b) Is conducting its business in an unauthorized or unsafe manner;
>
> (c) Is in an unsound or unsafe condition to transact its business;
>
> (d) Cannot with safety and expediency continue business;
>
> (e) Has an impairment of its capital; or, in the case of a savings and loan association or credit union, has assets insufficient to pay its debts and the amount due members upon their shares;
>
> (f) Has suspended payment of its obligations; or, in the case of a savings and loan association, has failed for two years after a withdrawal application has been filed with it by any shareholder to pay such withdrawal application in full;
>
> (g) Has neglected or refused to comply with the terms of a duly issued order of the superintendent;
>
> (h) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the department;
>
> (i) Has refused to be examined upon oath regarding its affairs.

(j) Has refused or failed to take proceedings for voluntary liquidation in accordance with the requirements of subdivision eight or subdivision nine of section six hundred five of this chapter.

2. The superintendent may, in his discretion, and upon such conditions as may be approved by him, surrender possession and permit such banking organization to resume business.

2. Massachusetts. *Annotated Laws of Massachusetts*, Vol. 3, ch. 93, sec. 34, provides in part as follows:

SEC. 34. *Powers and Duties of Commissioner of Banks as to Savings and Loan Associations.*—The commissioner of banks shall have the same powers and duties in respect to savings and loan associations which he now has or may hereafter have in respect to saving banks. * * *

Vol. 5, ch. 167, sec. 22 provides:

SEC. 22. *When Commissioner may take possession of bank; voluntary dissolution.*—Whenever it shall appear to the commissioner that any bank has violated its charter or any law of the commonwealth, or is conducting its business in an unsafe or unauthorized manner, or that its capital is impaired, or if it shall refuse to submit its books, papers and concerns to the inspection of the commissioner or of his duly authorized agents, or if any officer of such bank shall refuse to be examined on oath by the commissioner or his duly authorized assistants touching its concerns, or if it shall suspend payment of its obligations, or if from an examination or from a report provided for by law the commissioner shall have reason to conclude that such bank is in an un-

sound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, the commissioner may take possession forthwith of the property and business of such bank and may retain possession thereof until the bank shall resume business or until its affairs shall finally be liquidated as herein provided.

See also Vol. 5, ch. 170B, Sec. 4 (taking possession of cooperative banks).

3. California. *Deering's California General Laws*, Vol. 1, Act 986, sec. 13.11, provides as follows:

SEC. 13.11. *Power to take possession of association.*—If the commissioner as the result of any examination or from any report made to him or to any association doing business in this state or its investors or any thereof, shall find that such association is violating the provisions of its articles of incorporation or charter or by-laws or any law of this state, or is conducting its business in an unsafe or injurious manner, he may by an order addressed to such association direct a discontinuance of such violations or unsafe or injurious practices and a conformity with all the requirements of law; and if such association shall not comply with such order within the time specified therein, or if it shall appear to the commissioner that any association is in an unsafe condition or is conducting its business in an unsafe or injurious manner such as to render its further proceeding hazardous to the public or to any or all of its investors, or if he shall find that its assets are impaired to such an extent that, after deducting all liabilities, other than to its investors they do not equal or exceed the sum of the

value of its outstanding shares and investment certificates and the par value of its outstanding stock, or if any association shall refuse to submit its books, papers and accounts to the inspection of the commissioner or any of his examiners, deputies or assistants, or if any officer thereof shall refuse to be examined upon oath concerning the affairs of such association, then the commissioner may forthwith demand and take possession of the property, business and assets of such association and retain such possession until such association shall with the consent of the commissioner resume business, or until its affairs be liquidated. Such association may, with the consent of the commissioner, resume business upon such conditions as may be approved by him.

4. Indiana. *Burns Indiana Statutes Annotated* (1933), Section 18–301, provides:

18–301. *When department may take possession.*—In addition to any and all other powers conferred by this act, the department is hereby authorized to take possession of the business and property of any financial institution to which this act is applicable, except small loan companies, whenever it shall appear to the department that such financial institution:

(a) Has violated its articles of incorporation, or any law of this State, or any rule or regulation made and promulgated by the department; or

(b) Is conducting its business in an unauthorized or unsafe manner; or

(c) Is in an unsound or unsafe condition; or

(d) Can not, with safety and expediency, continue business; or

(e) Has an impairment of its capital; or

(f) Has suspended payment of its obligations; or

(g) Has neglected or refused, for a period of thirty (30) days, to comply with the terms of a duly issued order of the department, essential to preserve the solvency of such financial institution; or

(h) Has refused, upon proper demand, to submit its records and affairs for inspection to the department; or

(i) Has refused to be examined upon oath regarding its affairs; or

(j) Is insolvent or in imminent danger of insolvency.

5. Ohio. *Page's Ohio General Code Annotated*, Vol. 1, section 687, provides:

SEC. 687. *Superintendent may take possession of building and loan association, when.*—If upon examination, the superintendent of building and loan associations finds that the affairs of a domestic building and loan association are in an unsound or unsafe condition, or that it is conducting its business in whole or in substantial part contrary to law, or failing to comply therewith, or that its affairs are not being conducted for the best interests of its depositors, shareholders or creditors, he may, with the written approval of the director of commerce, forthwith take possession of the business and property of such building and loan association.

6. New Jersey. *New Jersey Statutes Annotated*, Title 17, Article 11, section 17:12-65, provides:

17:12-65. *Causes for revocation of authority* When it appears to the commis-

sioner that the interests of the creditors or shareholders of an association are being jeopardized because the association has violated its charter or a law of this State, or is conducting its business in an unsafe or unauthorized manner, or if the association refuses to submit its books, papers and concerns to the inspection of the commissioner or an examiner appointed by him, or if an officer or director refuses to be examined on oath regarding the affairs of the association, or if the association suspends payment of its obligations, or, if from an examination or report provided for by this chapter, the commissioner has reason to conclude that the association is in an unsound or unsafe condition to transact business, or that it is insolvent, or that it is unsafe or inexpedient for it to continue business, or if the association neglects or refuses to observe an order of the commissioner issued pursuant to section 17:12–64 of this title, he may, if the association is of another State, revoke and cancel its authority to do business in this State, and if the association is incorporated under the laws of this State, proceed in the manner provided by sections 17:12–66 to 17:12–80 of this title.

Section 17:12–67 provides:

17:12–67. *Taking possession of property and business; business continued or liquidated* The commissioner may forthwith take possession of the property and business of the association and retain such possession until the property and business of the association shall be returned to the management of its board of directors, or its affairs be finally liquidated as herein provided. On taking possession of the

property and business of any such association, the commissioner may continue the operation of the business of the association until its property and business shall be returned to the management of the board of directors of the association, or such association shall merge or consolidate with another association, or until liquidation of the association shall commence, as hereinafter provided.

7. Kentucky. *Kentucky Revised Statutes* (1946), section 289.420, provides:

> "289.420 [874f; 874g] *When director of banking to take charge of associations.*—The director of banking may take charge of any association whenever:
>
> (1) It appears to him that the assets of the association do not exceed the dues paid in on the shares, or that it is conducting its business in a fraudulent, illegal, or unsafe manner; or
>
> (2) The association or its officers willfully refuse, after demand by the director of banking, to comply with any of the provisions of this chapter.

U. S. GOVERNMENT PRINTING OFFICE: 1947

IN THE

Supreme Court of the United States

October Term, 1946.

No. 687.

---

vs.

Appeal From the District Court of the United States for the Southern District of California.

Brief of Appellees Paul Mallonee, C. H. Newhouse, Winnie Bucklin, Shareholders' Members' Protective Committee.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 687.

JOHN H. FAHEY, individually, JOHN H. FAHEY, as the Federal Home Loan Bank Commissioner, and A. V. AMMANN, individually, and A. V. AMMANN, as Purported Conservator for the Long Beach Federal Savings and Loan Association,

Appellants,

(Defendants below)

vs.

PAUL MALLONEE, C. H. NEWHOUSE, and WINNIE BUCKLIN, individually, and as Representatives of a class, suing for, and on behalf of, all the members of the Long Beach Federal Savings and Loan Association,

Appelles,

(Plaintiffs below)

THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,

Appellee,

(Defendant and Cross-Claimant below).

TITLE SERVICE COMPANY,

Appellee,

(Defendant and Cross-Claimant in Interpleader, below).

ROBERT H. WALLIS,

Appellee,

(Defendant and Cross-Claimant in Interpleader below).

FEDERAL HOME LOAN BANK OF LOS ANGELES,

Appellee,

(Third Party Defendant below).

Brief of Appellees Paul Mallonee, C. H. Newhouse, Winnie Bucklin, The Shareholder Members' Protective Committee.

Opening Statement.

This litigation was commenced by the plaintiffs, The Shareholder Members' Protective Committee [R. 1-17] suing for and on behalf of some 16,000 [R. 77, 202] Long Beach citizens, whose $26,000,000.00 in savings [R. 2, 3, 4, 33, 55, 67, 73, 77, 101 and 221; has been unconstitutionally seized by the defendant-appellants John H. Fahey and A. V. Ammann [R. 105] from the admittedly solvent [R. 525] Long Beach Federal Savings and Loan Association, without notice, hearing or cause [admitted by failure to deny, R. 524].

This was the second of a chain of such seizures, the first was the seizure, without notice, hearing or cause [R. 353, 377], of the admittedly solvent Federal Home Loan Bank of Los Angeles and its $43,000,000.00 in assets [R. 8, 26, 208, 209, 287], which included approximately $381,000.00 of the assets belonging to these plain-

tiffs, the shareholder members of the Long Beach Federal Savings and Loan Association [R. 208, 225-226].

The seizure of the Federal Home Loan Bank of Los Angeles was followed by its instantaneous dissolution, liquidation and merger, and the commingling of its assets with those of the Federal Home Loan Bank of Portland, and the instantaneous creation of a so-called new entity, the Federal Home Loan Bank of San Francisco with the proceeds [R. 291-295, 287].

All of this was done on the same day, without the consent of the shareholder members of any of said institutions [R. 627, 700].

Both of these seizures and transmutations of the funds of the thousands of shareholder members constituted a deprivation of their property without due, or any process, and were in violation of and repugnant to the Constitution of the United States.

Primary Question.

Is Section 5(d) of the Home Owners Loan Act of 1933, as amended, repugnant to the Constitution of the United States as being a delegation of unlimited legislative authority without providing any of the safeguards of due process required by the United States Constitution?

NOTE: The above question is the primary question because:

If the unanimous opinion of the Statutory Three Judge Court, declaring Section 5(d) of the Home Owners Loan Act of 1933, as amended, unconstitutional, is found to be correct and its decree affirmed, and thereby becomes the law of the case, it will be determinative of most of the

other issues in this litigation and the trial court can then expeditiously determine the remaining issues of accountings, clearing of titles to approximately 8,000 parcels of real property in southern California, and the restoration of said association and its assets to the management of its duly elected officers and directors, etc.

Whereas, a decision holding said Section 5(d) to be constitutional, or a decision on any of the other numerous collateral questions raised by appellants, in their efforts to reverse the unanimous opinion of the statutory three judge court, would not be determinative of this litigation, but would necessitate further extensive proceedings in the trial court to determine secondary issues, such as whether or not the discretion of the commissioner, if any, had been properly exercised, and similar secondary questions. Under the administration of the defendant-appellants there had already been a net loss in shareholder members' savings accounts of $10,000,000.00 [R. 392, and Affidavit of L. D. White filed in Supreme Court in support of Motion to Vacate Stay of Execution].

If the decree appealed from is reversed, the disposition of the collateral matters would provide grounds for subsequent appeals to this court, with the result that the litigation would be unduly prolonged and result in the ultimate loss to the plaintiffs of the subject matter of this litigation, irrespective of the ultimate outcome.

Plaintiffs, therefore, respectfully direct the attention of this Honorable Court to the determination of the primary question, to-wit: the unconstitutionality of Section 5(d) of the Home Owners Loan Act of 1933, as amended.

This issue of constitutionality was thoroughly considered by the court below after the filing of exhaustive points and authorities, affidavits and after oral argument and is here set forth in the belief it well presents this issue of prime importance in this appeal by the court which had the benefit of a personal appraisal of the facts and parties.

The Opinion Below of the Statutory Three Judge Court

Filed Sept. 5, 1946, in the District Court of the United States for the Southern District of California, 68 Fed. Supp. 418.

The Court below carefully considered the constitutional features of this litigation as is evidenced by their unanimous opinion as follows [R. 374-378]:

Opinion.

"Orr, Circuit Judge: The Long Beach Federal Savings and Loan Association was organized in 1934 under the Federal Home Loan Bank Act as amended. At the time of its incorporation its assets had a value of approximately $7,500. It has had the same president and board of directors during the ensuing years under whose management and guidance the institution has expanded to a point where, at the time of the seizure hereinafter referred to, its assets were of a value of approximately $26,000,000. It was at the time of seizure entirely solvent, with assets, in addition to an amount sufficient to pay its obligations, in the form of reserves and undivided profits in the sum of $1,300,000.

On May 20, 1946, A. V. Ammann, by virtue of his appointment as a conservator for said institution

by John H. Fahey, Administrator, took charge of said institution, and has since been in possession thereof. The conservator took over the Long Beach Federal Savings and Loan Association without notice or hearing of any kind. Subsequent to the taking possession of the bank an administrative hearing was ordered.

Plaintiffs are shareholders in the Long Beach Federal Savings and Loan Association. Several petitions in intervention and third party claims have been filed. All but one of them have joined in the actions of the original plaintiff for injunction.

Temporary orders were issued restraining the merger of the institution with other institutions of like character and restraining the commissioner from holding an administrative hearing.

At the request of certain of the parties a three-judge court was convened under authority of §380(a) of the Judicial Code (28 U. S. C. A., §380(a)).

Defendant Ammann has challenged the jurisdiction of the three-judge court to hear and determine the application for the restraining orders on the ground that the provisions of §380(a) have no application to the law and the facts as presented by said applications. Defendant Ammann's position is: That the instant proceeding seeks to restrain the operation of rules and regulations promulgated by the Board rather than the enforcement, operation or execution of or setting aside in whole or in part of an act of Congress on the ground that the law itself is unconstitutional.

We think the contention is without merit.

Authority to do the acts sought to be restrained, if found to exist, must be bottomed on subsection (d)

of §5[1] of the Federal Home Loan Bank Act as amended. It is on the direct operation of this statute that the commissioner must rely.

Threatened action under the authority of the statute is sought to be restrained on the ground that the statute is unconstitutional and void in that it attempts to confer legislative power on the board. Clearly this proceeding comes within the provisions of §380(a) and the question is required to be heard by a three-judge court.

Appellants [error in printed record obviously refers to appellees here][1a] concentrate their attack on subsections (a) and (d) of §5 of the Act. It is argued that subsection (d), in attempting to authorize the board to make rules and regulations for the purposes mentioned in said subsection (d) delegates legislative power to the board without prescribing either adequate, or any statement of policy, standards, limitations or criteria to guide the board in exercising its functions and is contrary to Article I, Section 1, and Article I, Section 8 (paragraph 18), of the Constitution of the United States (U. S. C. A. Constitution, Article I, Sec. 8, Clause 18).

It is agreed that functions of the legislature may not be delegated by the Congress to any executive or executive department; hence, there is posed a single question for determination, to-wit: Has the Congress

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[1]12 U. S. C. A., §1464 (d): "(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

[1a]Interpolation added.

made such a delegation in the sections of the Act under consideration? Fortunately the course to be followed in determining questions of this character had been well chartered by the Supreme Court of the United States. We have but to endeavor to make the proper application of the principles by said court enunciated to the conditions existing in the matter before us. We refer particularly to Panama Refining Co. v. Ryan, 293 U. S. 388, and Schechter v. U. S., 295 U. S. 495. We look to the statute to see whether the Congress has declared a policy with respect to the providing of rules and regulations for the reorganization, consolidation, merger, or liquidations of federal savings and loan associations, including the power to appoint a conservator or receiver to take charge of the affairs of any such association, and to require as equitable readjustment of the capital stock of the same; and to release any such association from such control and permit its further operation—Whether the Congress has set up a standard for the president's (board's) action; whether the Congress has required any finding by the president (board) in the exercise of the authority to do the things enumerated in Sec. 5(d) of the Act. (Panama Refining Co. v. Ryan, supra, p. 415.) It may be said of Sec. 5(d), as was said of the section involved in the Panama case, that it is 'brief and unambiguous.' It makes no attempt to lay down rules for the guidance of the board, nor does it state in what circumstances or under what conditions the board is to merge institutions or appoint a conservator or receiver. It establishes no criterion to govern the board's course. It does not require any finding by the board as a condition of its action. No policy is declared by Congress as to merger, or appointment of conservator. The section gives to the board unlimited authority to formulate rules for the board's action

in the respects mentioned and to do so as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to govern itself. We are unable to find in the Act a declaration of policy or standard of action which can be deemed to relate to the subject of section 5(d).

The Los Angeles Bank, with assets of $43,000,000 was merged with a Portland bank and later both with a bank in San Francisco. While the legality of this merger is not before us we consider it because the aim of a statute may be learned 'both from its terms and from the administrative practice under it.' Schechter v. U. S., supra. The merger was made without notice or hearing of any character. In fact, none is required by the statute and herein lies a fatal defect as to its constitutionality.[2]

We think due process requires a hearing on notice and this should be provided within the Act itself.

Comparison of the Home Owners Loan Act of 1933 as amended, under consideration here, with other acts of Congress which have been held unconstitu-

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[2] *Ohio Valley Water Co. v. Ben Avon*, 253 U. S. 287; *Coe v. Armour Fertilizer Works*, 237 U. S. 413; *Hovey v. Elliott*, 167 U. S. 409.

See also:

Boeing Air Transit Co. v. Farley, 75 F. (2d) 765.

tional because of improper delegation of legislative power, demonstrates that said Home Owners Loan Act fails to set up as comprehensive and definite statements of policy, standards, guides, criteria and limitations as do those acts.[a]

We hold Sec. 5(d) of Home Owners Loan Act of 1933, as amended, unconstitutional and void as attempting to delegate legislative power to the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.

Let judgment be entered in accordance with this opinion.

WM. E. ORR,
United States Circuit Judge.
DAVE W. LING,
United States District Judge.
PEIRSON M. HALL,
United States District Judge."

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[a] *National Industrial Recovery Act:*
Panama Refining Co. v. Ryan, 293 U. S. 388;
Schechter Poultry Co. v. U. S., 295 U. S. 495;
Bituminous Coal Conservation Act of 1935:
Carter v. Carter Coal Co., 298 U. S. 238.

See also:
Ohio Valley Water Co. v. Ben Avon, 253 U. S. 287.

Legal, Historical and Factual Background.

This primary question as to the unconstitutionality of this unlimited delegation of the legislative power by the Congress of the United States, the duly elected law-making representatives of the people arises from the following series of legislative historical facts:

The Congress of the United States by their enactment of Subsection (d) of Section 5 of the Home Owners Loan Act of 1933 (Subsection (d) of Section 1464 of the Home Owners Loan Act of 1933—Title 12—Vol. 4 F. C. A. p. 358) delegated to "the board" the unrestricted function to enact legislation regarding the appointment of conservators, without imposing any limitations whatsoever or any of the safeguards of due process, required by the Constitution of the United States. (Art. I, Sec. 1 and Art. I, Sec. 8, and par. 18, United States Constitution.)

Congress by the previously enacted Federal Home Loan Bank Act had created "the board" referred to in subsection (d) of Section 5, *supra*. (Sec. 1437, Federal Home Loan Bank Act—Title 12—Vol. 4 F. C. Annot. p. 349) and provided therein among other things:

> "Said Board shall consist of five citizens of the United States appointed by the President of the United States, by and with the advice and consent of the Senate. *Not more than three members of the Board shall be members of the same political party.* Each member shall devote his entire time to the business of the board . . . etc." (Emphasis added.) [R. 280, 281.]

This attempt, by Congress, to delegate its legislative function to "the board" was unconstitutional as the members of such a board were not elected by the people and hence were not responsive to the people.

Under our American form of democratic government, safeguarded by the Constitution of the United States, the people have at all times, retained unto themselves the control of the enactment of legislation, by which they, the citizens themselves are governed. They have done this by requiring that legislative functions be exercised only by the duly elected representatives of the people in the halls of Congress, and have thus kept their legislators promptly responsive to the people by requirement that they be reelected every two years, as to the House of Representatives, and every six years, as to Senators.

Thus, the sovereign people of the United States have endeavored by their Constitution (Amendment X) to retain unto themselves the ultimate control of the enactment of laws for governing themselves.

This is self government. This is democracy in action.

The reason, wisdom and need for the constitutional limitations, that legislative functions entrusted by the sovereign people of the United States to their duly elected representatives in Congress, cannot, and shall not be delegated to non-elective boards or persons, is exemplified by the instant case.

In this case, the attempted enactments of the Federal Home Loan Bank Administration have succeeded in changing it from a supervising agency to a totalitarian dictatorship, with an administrative policy of "Rule or Ruin".

This change was accomplished by the following enactments:

On June 13, 1933, shortly after its creation, "the board" enacted its so-called rules and regulations for federal savings and loan associations, to-wit: Section 45 thereof, which provided that under certain conditions enumerated in said Section 45:

> "The board may, on becoming satisfied of the existence of any or all of the conditions set forth above, forthwith appoint a receiver or conservator for such association and shall require such bonds, etc. . . ."

and further in the same section provided:

> *"It will not be the policy of the board, except in extra-ordinary circumstances, to exercise such power without giving the institution an opportunity to be heard."* [R. 281.] (Emphasis added.)

It is interesting to note that while there was vested in the board at that time no constitutional authority to enact such amendment, nevertheless, the board, consisting of five men, of whom not more than three could be of any one political party, attempted to provide for some semblance of due process before taking such drastic action as to seize and appoint a conservator for a federal savings and loan association.

(We regret that no Federal Register then existed; hence citations to a Federal Register are not available.)

Subsequently, and while the Federal Home Loan Bank System was still being administered by a board composed of five men, to-wit, on June 1, 1938, the said board enacted amendments regarding the appointment of conserva-

tors, and among other things endeavored to provide at least a semblance of due process as follows:

> "Sec. 2043. Conservator or Receiver . . . . (c) *Hearing. Before any appointment of a conservator or receiver, the Federal Association will be given the opportunity to be heard;* provided, however, that the board may appoint a temporary conservator pending such hearing. (Sec. 5(a), (d)." (Emphasis added.) (Sec. 51(c), Revised Rules and Regulations of Federal Rules and Regulations, effective December 1, 1936.) [R. 282.]

It should be noted that while the board probably had no constitutional authority to enact rules for the appointment of even a temporary conservator, nevertheless, the board, then composed of five men, of whom not more than three could belong to any one political party, was still maintaining a semblance of due process by providing for a hearing before seizing any such associations and appointing conservators therefor.

Thereafter, to-wit, on February 24, 1942, pursuant to the First War Powers Act of 1941, the Chief Executive issued Executive Order No. 9070, effective February 24, 1942, which provided among other things for the consolidating of the housing agency and its functions of government, into the National Housing Agency and provided that certain agencies, which included the Federal Home Loan Bank Board and its functions,

> "duties and powers, are consolidated into a National Housing Agency and shall be administered as hereinafter provided under the direction and supervision of a National Housing Administration",

and the same directive,

> "transfers all personnel in above agencies to the status created by the new agency, National Housing Administration, except as noted in 8"

which provided as follows:

> "8. The following personnel are not transferred hereunder . . . (2) the members of the Federal Home Loan Bank Board, *other than the Chairman.*" (Emphasis added.)

The effect of this Order was to make the chairman of the Federal Home Loan Bank Board, commissioner, director, and sole dictator of the Federal Home Loan Bank Administration, which function was then and ever since has been exercised by Mr. John H. Fahey, the first named defendant and an appellant herein.

Thereafter, to-wit, on January 25, 1943, the said commissioner and sole dictator, defendant-appellant John H. Fahey, *individually*, enacted further amendments dealing with the appointment of conservators, as follows:

> "Section 206. Receiver or conservator, appointment. Whenever, in the opinion of the Federal Home Loan Bank Administration, any federal savings and loan association . . . does any of the ten things enumerated in general language in said section . . . the Federal Home Loan Bank Administration (the defendant-appellant John H. Fahey as sole administrator and dictator) may *appoint a conservator for such federal association* to conserve the assets of the association pending further disposition of its affairs. *The appointment shall be by order*, which order shall state on which of the above causes the appointment is based . . .". [R. 282.] "The *conservator or re-*

ceiver shall forthwith upon appointment take possession of the association, and at the same time such conservator or receiver shall notify the officer or employee of the association, if any, who shall be in the home office of the association and appear to be in charge of such office, of the action of the Federal Home Loan Bank Administration." (Emphasis added.) [R. 283.]

NOTE: Although the term "administration" or "board" is used, actually the so-called "board" or "administration" now consisted solely of one man, defendant-appellant John H. Fahey.

Further, in the same section, the enactment by the commissioner provided:

> "If such certified copy of the order appointing the conservator or receiver is received at the offices of the association after the taking of possession by the conservator or receiver, such conservator or receiver shall hand the same to any officer or director of the association who may make demand therefor."

NOTE: Nowhere in any of the new rules and regulations enacted by the commissioner, defendant-appellant John H. Fahey, is there any provision for notice or hearing of any kind before appointment of a conservator, merger or consolidation. This enactment by defendant-appellant John H. Fahey, the commissioner and sole director of the Federal Home Loan Bank Administration, indicates that the seizure will be made and possession will be taken without, *and even before,* a certified copy of the order appointing the conservator is available.

The seizure in the instant case was made in California simultaneously with the making of the so-called "order" appointing the conservator in Washington, D. C.

Further in the same enactment by the defendant-appellant John H. Fahey, it is provided by Section 207.1:

> *"Take possession when.* Upon appointment, the conservator for a federal association shall forthwith take possession of the books, records and assets of every description of such association."

> *"Sec. 207.3. Succession.* Immediately upon the posting of the notice on the door of such federal association, as provided in paragraph (a) of Section 207.2 of these rules and regulations, the conservator shall succeed to all the rights, powers and privileges of the federal association, its officers and directors or any of them. Such officers and directors or any of them shall not thereafter have, exercise or act in connection with, any such rights, powers or privileges, or any asset or property of any nature of the association . . ."

This "pogrom" displaced from the possession and management of the said federal association, the duly elected officers, without prior notice or opportunity to be heard or any due process whatsoever.

NOTE: The Court's attention is directed to the fact that nowhere in the amendments relating to the appointment of a conservator or receiver for a federal savings and loan association and the powers and duties of such a conservator, as enacted by the defendant-appellant John H. Fahey, as commissioner and sole director, is there any provision or allowance whatsoever made for a hearing before any court, or at all, or for due process of any kind

BEFORE the seizure of such associations by a purported conservator. [R. 283.] (Amendments of Jan. 25, 1943—recorded 8 Fed. Reg. 1180 Wed., Jan. 27, 1943.)

No hearing may be had at any time unless requested by dispossessed officers, and then only before a self-serving prejudiced tribunal, and shareholder members are not at any time afforded an opportunity for a hearing before an impartial tribunal. [R. 283.] (Sec. 206.1 of Part IV, amended Jan. 27, 1943.)

By Bulletin 59 dated May 20, 1946, filed May 20, 1946, at 11:15 A. M. in Washington, D. C., to-wit: 8:15 A. M. of May 20, 1946, Pacific Standard time of Long Beach, California, which was literally simultaneous with the seizure of the solvent Long Beach Federal Savings and Loan Association by the purported conservator, the defendant-appellant A. V. Ammann, there was issued by the commissioner a bulletin amending Section 207.11 as follows, to-wit:

> "*Authority of Officers.* Any authority or requirement under Sections 207.5 to 207.10 for action, by order or otherwise, by the Federal Home Loan Bank Administration, or by the Governor, a Deputy Governor or an Assistant Governor, *may be performed by the Governor, a Deputy Governor*, or an *Assistant Governor*. Without any limitation on the applicability of this section to other conservatorships, *this section shall apply to any conservatorship existing at the time of the amendment affected by the adoption of this section, and to the conduct of and procedure under any conservatorship so existing.*" (Emphasis added.) (Sec. 5(a), (d) of H. O. L. A. of 1933, 48 Stats. 132, 133; 12 U. S. C. 1464(a) (d), E. O. 9070, 7 F. R. 1529.)

The above enactment No. 207.11 was obviously adopted in the attempt to delegate to Mr. Lee, a then governor, the authority which he would not otherwise have had, that is to make the order which he was then *simultaneously* making, purportedly appointing the defendant-appellant A. V. Ammann.

Even after the seizure in the instant action of the financially healthy Long Beach Federal Savings and Loan Association and the appointment of a purported conservator therefor, and without any prior notice, hearing or opportunity to be heard, to wit: without any semblance of due process, an attempt was made by the defendant appellant John H. Fahey, commissioner and sole director of the Federal Home Loan Bank Administration to further delegate the unlimited legislative function, to-wit: Bull. 61, dated June 6, 1940, Section 207.12:

> "*Delegation by Conservator.* The conservator may delegate to such persons as he may designate any or all of the powers and authorities vested in the conservator by or under sections 207.3, 207.5, 207.6 and 207.7. Without any limitation on the applicability of this section to other conservatorships, this section shall apply to any conservatorship existing at the time of the amendment effected by the adoption of this section, and to the conduct of any procedure under any conservatorship so existing.". Sec. 5(a), (d), of H. O. L. A. of 1933, 48 Stat. 132, 133; 12 U. S. C. 1464(a), (d); E. O. 9070, 7 F. R. (1529).

The power of legislative enactment entrusted by the sovereign people of the United States of America, to their duly elected representatives in Congress, and whom, they, the people, can hold accountable at regular intervals through the instrumentality of the ballot box, the hand maiden of our representative form of democratic government, has been delegated, contrary to the provisions of Article I, Section 1, and Article I, Section 8, paragraph XVIII, of the Constitution of the United States to; first a non-political five man board, which at least endeavored by its enactments, unconstitutional though they may have been, to maintain some semblance of due process before seizure, and thereafter by successive steps, the legislative function, a principal element of sovereignty, passed without restriction, to the hands of a one man dictator, who, by his enactments, removed even the semblance of due process before seizure, and in turn, again even attempted to delegate without limitation, the sovereign right of enactment of legislation, to various governors, deputy governors, and assistant governors, and finally he further attempted to delegate the function of legislation so that even the conservator could further delegate this sovereign power

> "to such persons as *he* may designate". (emphasis added)

to-wit: even to persons unknown.

So long as the sovereign power of legislative enactment, even though, unconstitutionally delegated, remains in the

hands of benevolent dictators, the dangers thereof might not be, at first, apparent; however, when this sovereign power of legislative enactment falls into the hands of an adamant dictator who, for the National System of Federal Savings and Loan Associations, adopts a policy of so-called supervision which has for its watchword the cry of "rule or ruin", then the vicious dangers to our representative democratic form of government become quickly apparent, even as in the instant case.

The manner in which acts of an administrative officer functions under an enactment is of assistance in interpreting the scope of such enactment, as his acts disclose the interpretation placed upon such enactment by the official administering thereunder.

In *Schechter Poultry Co. v. U. S.*, 295 U. S. 495, the rule was enunciated by Mr. Justice Cardozo at page 551:

> "This court has held that delegation may be unlawful though the act to be performed is definite and single, if the necessity, time and occasion of performance have been left in the end to the discretion of the delegate."

and at page 553:

> "This is delegation running riot. No such plenitude of power is susceptible of transfer. The statute, however, aims at nothing less as one can learn both from its terms and *from the administrative practice under it.*" (Emphasis added.)

Also see *Yick Wo v. Hopkins*, 118 U. S. 356 (1886), quoted with approval as recently as this year in the con-

curring opinion of Mr. Justice Frankfurther in *U. S. v. United Mine Workers*, 91 L. Ed. Adv. 595.

The unreserved delegation of unrestricted authority, away from the elected representatives of the people into the hands of a nonelected individual produces the hallmark of dictatorship:

Unlimited Power concentrated in one person.

The acts of the defendant-appellants A. V. Ammann and John H. Fahey in the instant case clearly disclose, that in their opinion at least, the delegation of legislative authority by Section 5(d) of the Home Owners Loan Act of 1933 as amended, was complete and unreserved, and constituted a grant to the commissioner, defendant- appellant John H. Fahey, of unlimited power—"a roving commission to inquire into evils (even imaginary) and upon discovering them, to do anything he pleases to correct them" in accordance with what *he*, in his omnipotent judgment might deem desirable.

Mr. Justice Cardozo stated that such delegation of unlimited legislative authority was repugnant to the Constitution, expressing the rule in graphic language in the case of *A. L. A. Schechter Poultry Corporation v. United States*, *supra*, as follows:

> There can be "no grant to the executive of any roving commission to inquire into evils and then, upon discovering them, to do anything he pleases" to correct them. (p. 551).

Facts.

In the instant case the verified pleadings and affidavits of the appellees have generally not been denied except in some minor particulars and therefore stand generally admitted, and the trial court has found to be true, as mostly admitted, the facts which raised the question of unconstitutionality and required the issuance of injunctions, to be, that:

On May 20, 1946, the defendant-appellant A. V. Ammann, with the assistance of numerous other persons, seized possession of the solvent Long Beach Federal Savings and Loan Association, in Long Beach, and all of its then assets, which then exceeded twenty-six millions of dollars ($26,000,000.00). [Aff. Mallonee, R. 25, *admitted* by Aff. Ammann, R. 296, Findings I, II, R. 493].

The seizure was accomplished by the defendant-appellant A. V. Ammann without any prior notice, or hearing of any kind whatsoever, and he only orally claimed to have been authorized by this co-defendant-appellant, Mr. Commissioner John H. Fahey, hereinafter referred to as "defendant-appellant Fahey" [Admitted by Affs. of Ammann, R. 296 and 297; Findings II, V, VI, R. 493 and 494.]

It was only after some insistence by the officers of the Long Beach Federal Savings and Loan Association that the defendant-appellant, A. V. Ammann, produced a typewritten *unsigned* so-called order, which he then and there proceeded to certify himself, as assistant secretary of the Federal Home Loan Bank Administration, claiming that the said order had been issued in Washington the preceding day and had been read to him over the

telephone. [Aff. T. A. Gregory, R. 284 and admitted by Aff. A. V. Ammann, R. 297.]

It was further claimed by the defendant-appellant, A. V. Ammann,

> "that the immediate effect of this action was to relieve the officers and directors of all authority and that it places the conservator in their stead." [Aff. Ammann, R. 296.]

At the time of the seizure the Long Beach Federal Savings and Loan Association was an organization which had grown in the preceding twelve years under the management of substantially the same officers and directors from a seventy-five hundred dollar ($7,500) institution in 1934 to a twenty-six million dollars ($26,000,000.00) financial institution in 1946 [R. 120-121] and had continuously during this entire period, payed dividends of two and a half to four per cent (2½% to 4%) per annum [R. 284]. At the time of the seizure it admittedly had a surplus and undivided profits of over a million dollars, to-wit: approximately one million three hundred thousand dollars ($1,300,000.00). [Finding I, R. 120-121.]

Subdivision (a) of Section 5 of the Home Owners Loan Act of 1933, as amended, provides for the organization of *local thrift associations* for the financing of homes, "under such rules and regulations as it (the Board) may prescribe". In 1934 the Long Beach Federal Savings and Loan Association was organized thereunder. It should be noted that this Subdivision (a) of Section 5 is not the subdivision declared unconstitutional by the statutory three-judge court. It was Subdivision (d) of Section 5 that delegates unlimited legislative authority, to enact

"rules and regulations" for the "reorganization, consolidation, merger, or liquidation of such associations"—which was so declared to be unconstitutional.

Subdivision (d) of Section 5 of the Home Owners Loan Act of 1933, as amended, is here under consideration as unconstitutional—not Subdivision (a)—as might be inferred from A. B. 5.

The Association was *not* supported or financed in anyway by any governmental money whatsoever, but its entire capital and deposits then consisted solely of the mutual savings of approximately 16,000 of its shareholder members. [Undenied Aff. T. A. Gregory, R. 285.]

On May 20, when seized said Long Beach Federal Savings and Loan Association had approximately twelve million of dollars ($12,000,000.00) in government bonds, a part of which were unregistered, bearer bonds, negotiable without endorsement. The Long Beach Federal Savings and Loan Association also had approximately 8,000 secured notes with unpaid balances aggregating approximately twelve millions of dollars ($12,000,000.00), all of which notes had been made by residents of southern California, to the Long Beach Federal Savings and Loan Association, a mutual association, having its legal domicile in Long Beach, in southern California and its main office in Long Beach, and all such notes were secured by trust deed which conveyed the title to approximately eight thousand (8,000) parcels of real estate in southern California to the Title Service Company, a California corporation, likewise having its legal domicile in Long Beach, California, as trustee for the benefit of the Long Beach Federal Savings and Loan Association. [Undenied Aff. Roberts, R. 135.]

All of the assets of the said Long Beach Federal Savings and Loan Association, including both real and personal property were physically present in southern California. [Undenied Aff. Gregory, R. 285.]

At the time of the seizure there was physically present in the office of the Long Beach Federal Savings and Loan Association, cash and unregistered bearer bonds, negotiable without endorsement, amounting in the aggregate to approximately $1,000,000.00 which belonged to the Long Beach Federal Savings and Loan Association, and there was additional cash and other securities, resulting from collections for other persons. The exact amounts of these items are still unknown to the plaintiffs for the reason that though repeatedly requested so to do, the defendant-appellant A. V. Ammann, at the time of the seizure, refused to, declined to and did not, give to the officers or directors of the Long Beach Federal Savings and Loan Association or to any other person, any receipt, acknowledgement, inventory or other evidence or list of the amount of cash, bearer bonds, securities, negotiable bonds, valuables or other property which at the time were physically seized and taken from the possession of the officers and directors of the Long Beach Federal Savings and Loan Association, and, since such seizure, the said defendant-appellant A. V. Ammann has continuously and steadfastly thereafter declined to and refused to and did not give to the plaintiffs any such inventory, receipt, acknowledgment or other listing of the negotiable property

so seized until approximately four and a half months thereafter, to wit, not until November 6, 1946. [Undenied Aff. T. A. Gregory, 285, and Aff. T. A. Gregory, R. 120.]

That at the time of the seizure requests were made of the defendant-appellant A. V. Ammann, that certified public accountants, the auditors for said Long Beach Federal Savings and Loan Association, who were then personally present, be permitted to make an itemized list of the assets, cash securities and properties then being seized from said Long Beach Federal Savings and Loan Association, but the defendant-appellant A. V. Ammann, refused and declined to permit any one to make any such lists, receipts or detailed accounting of the moneys, securities, bonds and valuables then being seized, and a few minutes after said seizure, without having made any inventory or account listing, the negotiable assets and cash seized, the defendant-appellant A. V. Ammann admitted reopened the offices of said Long Beach Federal Savings and Loan Association to the general public and started disbursing to the general public the money so seized. [Undenied Aff. Gregory, R. 129, and Keith Linden, R. 71.]

Because of the arbitrary acts of the defendant-appellant A. V. Ammann in refusing to permit the taking of an inventory these plaintiffs still do not know, and may never be able to obtain a true and correct accounting of the millions of assets seized except such as the defendant-appellants A. V. Ammann and John H. Fahey cares to admit seizing.

The so-called order No. 5254 [R. 219-220][4] which the defendant-appellants A. V. Ammann and John H. Fahey refer to at (A. B. 6) but fail to reproduce, is almost a

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[4] Whereas, it has been determined that the Long Beach Federal Savings and Loan Association, Long Beach, California:

is conducting its business in an unlawful manner;

is conducting its business in an unauthorized manner;

is conducting its business in an unsafe manner;

has a management which is unsafe to manage a Federal Savings and Loan Association;

has a management which is unfit to manage a Federal Savings and Loan Association;

is pursuing a course that is jeopardizing the interests of its members;

is pursuing a course that is jeopardizing the interests of its creditors;

is pursuing a course that is jeopardizing the interests of the public;

is pursuing a course that is injurious to the interests of its members;

is pursuing a course that is injurious to the interest of its creditors; and

is pursuing a course that is injurious to the interests of the public; and

Whereas, it has been determined to be in the interest of said association, its members, creditors, and the public to appoint a conservator to take possession of said association and to conserve its assets pending further disposition of said association and its affairs:

Now, therefore, A. V. Ammann is hereby appointed Conservator for the Long Beach Federal Savings and Loan Association, Long Beach, California, to take possession of said association and to conserve its assets pending further disposition of said association and its affairs; and, as such Conservator, to have and exercise all the powers and rights, enjoy all the privileges, and assume and perform all the duties and responsibilities of his office accorded or imposed by law, the Rules and Regulations for the Federal Savings and Loan System, and order issued by the Federal Home Loan Bank Administration, or otherwise.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on May 20, 1940.

A. V. AMMANN,
Assistant Secretary.

verbatim reproduction of their own so-called rule No. 206.1 [A. B. 111 Appendix] and is a list of legal conclusions only.

Yet defendant-appellants A. V. Ammann and John H. Fahey claim that this conclusion order was issued on the grounds

> "that it had been determined that the Association was *conducting* its business in an *unlawful, unauthorized,* and unsafe manner; that it had a *management* which *was unsafe* and *unfit* to manage a federal savings and loan association and that it was pursuing a course that was *jeopardizing* and injurious to the interest of its members, its creditors and the public" (A. B. 6). (Emphasis added.)

This same *unsafe* and *unfit* management, first complained of on the day of seizure had been for twelve years, with bi-annual examination by the administration, conducting the business of the Long Beach Federal Savings and Loan Association in such manner that the Long Beach Federal Savings and Loan Association had *continuously* paid dividends of 2½% to 4% to all of its shareholder members and still had a net surplus and undivided profits admittedly of more than $1,300,000.00.

Was the course of management which produced net profits of $1,300,000.00 "injurious to the interests of the members"—did it "jeopardize any of their interests" or was this same management which in twelve years built the Long Beach Federal Savings and Loan Association from a beginning of only $7500 into a $26,000,000.00 institution, "unsafe" and "unfit"—or was the management conducting "its business in an unlawful, unauthorized, or

unsafe manner, because of the dividends it had paid or the surplus this management had earned?

Was the business being conducted in an unsafe or unlawful manner because it had paid dividends continuously for twelve years?

Was the conduct of the business "unauthorized" because of the semi-annual audits being made by the Administration?

The defendant-appellants A. V. Ammann and John H. Fahey say

> "that it had been *determined* that the Long Beach Federal Savings and Loan Association was committing all of these 'heinous crimes'."

This so-called prior "determination" of all of these heinous things the defendant Long Beach Federal Savings and Loan Association and all of its officers were doing was made by whom? When? *On what testimony? Given by what witnesses at what hearing? Held* up on what notice? How were they examined? By whom? Not by the Long Beach Federal Savings and Loan Association.

Was the Association first chartered by the so-called "Bank Administration" "unlawful" or "unauthorized" because it had been so chartered or authorized by the Los Angeles Bank Administration? Did this all constitute "due" process?

Under the management of these defendant-appellants John H. Fahey and A. V. Ammann, as the socalled conservator Long Beach Federal Savings and Loan, the Association has lost nearly ten million dollars ($10,000,000.00) in shareholder member earnings deposits [R. 392] has increased its overhead [R. 395] has discharged

all of the loyal former employees who had been with the Long Beach Federal Savings and Loan Association for years.

Is this conducting the business in a "*safe* manner?"

By their unconstitutional acts are the defendant-appellants conducting the business in a "lawful" and "authorized" manner?

Are the defendant-appellants pursuing a course that does *not* jeopardize the Long Beach Federal Savings and Loan Association by the discharge of all of the loyal employees of the Long Beach Federal Savings and Loan Association?

Is the conduct of the defendant-appellants in losing ten million dollars ($10,000,000.00) of shareholder members savings deposits for the best "interest" of the members of the Long Beach Federal Savings and Loan Association?

—of its creditors?

—of the public?

Was the increase in overhead of the Long Beach Federal Savings and Loan Association by some seventeen thousand dollars ($17,000.00) in forty days, *i. e*, four hundred and twenty-five dollars ($425.00) per day [R. 395] for the best interests of the Long Beach Federal Savings and Loan Association members?

Is the conduct of the defendant-appellants in cancelling trust deeds and notes by having the signatures torn off so that titles can only be cleared by extensive litigation "safe" for the Long Beach Federal Savings and Loan Association [R. 399 and 408 and Admission of Ammann R. 409].

Was the act of the defendant-appellant A. V. Ammann in investing some two hundred sixty-six thousand seven

hundred dollars ($266,700.00) of the Long Beach Federal Savings and Loan Association's funds in the Federal Home Loan Bank of San Francisco the validity of whose existence was and is in litigation safe? [R. 395.]

Was the unauthorized exchange of the stock belonging to the Long Beach Federal Savings and Loan Association in the Federal Home Loan Bank of Los Angeles which then had a face value of three hundred forty-one thousand seven hundred ($341,700.00) plus an undivided interest in the earned profits of over forty thousand ($40,000) for stock in the Federal Home Loan Bank of San Francisco having an unknown value, and whose very existence was being litigated safe? [R. 395.]

Is this course of conduct of the defendant-appellant A. V. Ammann, the purported conservator approved as management to be safe and fit?

The seizure of the Long Beach Federal Savings and Loan Association by the defendant-appellants A. V. Ammann and John H. Fahey caused a run on the Long Beach Federal Savings and Loan Association, which resulted in the withdrawals from the Long Beach Federal Savings and Loan Association, within fifty (50) days, to wit, before July 10, 1946, of more than eight million dollars ($8,000,000.00), and before decision of the trial court on September 5, 1946, had resulted in the withdrawal of approximately ten million dollars ($10,000,000.00) over a third of its assets. [Undenied Affs. of Gregory, R. 286 and Affidavit of L. D. White filed in Supreme Court in Support of Motion to Vacate Order Staying Execution of Decree of Statutory Three Judge Court.]

That for the first forty (40) days of operation of said Long Beach Federal Savings and Loan Association, the so-called conservator, the defendant-appellant A. V. Ammann, appropriated for salaries, expenses and costs for himself and his associates from the funds of the said Long Beach Federal Savings and Loan Association, the sum of approximately seventeen thousand dollars ($17,000.00), over and above the expenses and salaries then being paid the legitimate employees of the Long Beach Federal Savings and Loan Association [Undenied Aff. of T. A. Gregory, R. 286 and Undenied Affidavit of Wm. C. MacArthur, R. 395].

The fears of the duly elected officers and directors of the Long Beach Federal Savings and Loan Association, that the defendant-appellants John H. Fahey and Ammann would liquidate, dissolve, transfer, merge or consolidate the said Long Beach Federal Savings and Loan Association with some other unknown association or institution and thus commingle and transmute its assets and funds so as to make it impossible to unscramble them, arose from the fact that the defendant-appellant John H. Fahey, acting through his associates, had on March 29, 1946, seized the admittedly solvent Los Angeles Federal Home Loan Bank and its approximately forty-three million dollars ($43,000,000.00) of assets and on the same day, liquidated, dissolved, merged, consolidated and commingled it and all of its assets with the approximately nine million dollars ($9,000,000.00) of assets of the Federal Home Loan Bank of Portland, and then on the same day, from the commingled assets of both banks, by his fiat created the so-called Federal Home Loan Bank of San Francisco [Admitted by Affidavit of Dougherty, R. 291].

The Long Beach Federal Savings and Loan Association owned stock in the Federal Home Loan Bank of Los Angeles at the time of its seizure, which had a par value of three hundred and forty-one thousand dollars ($341,000.00) and in addition the Long Beach Federal Savings and Loan Association was entitled to its *pro rata* interest in the undivided profits of nearly two million dollars ($2,000,000.00) of the Federal Home Loan Bank of Los Angeles which and an additional value of approximately forty thousand dollars ($40,000.00). All of the interest of the Long Beach Federal Savings and Loan Association in the Federal Home Loan Bank of Los Angeles was then and there confiscated and by virtue of the alleged unconstitutional fiats heretofore set forth (Sec. 207.3 of Rules and Regulations, as amended 1-27-43 (8 F. R. 1180)) the defendant-appellant John H. Fahey attempted to suspend the duly elected officers and directors of the Long Beach Federal Savings and Loan Association and to deprive them of all authority to exercise or act in connection with any of their rights, powers or privileges or to deal with any assets or property of any nature of the said association and from bringing appropriate legal action in the courts to protect the Long Beach Federal Savings and Loan Association and to recover its assets [Undenied Affidavit of T. A. Gregory, R. 287-288].

The Seizure of the Long Beach Federal Savings and Loan Association and its assets by the defendant-appellants A. V. Ammann and John H. Fahey, has placed a cloud or lien upon and has entangled the titles to approximately eight thousand parcels of real property in southern California. As a result thereof, a petition in interpleader and a bill in the nature of interpleader and various and

numerous petitions for intervention have had to be filed for the purpose of clearing the title to some two hundred (200) parcels of real property in southern California, and petitions for intervention are still constantly being filed in efforts to clear the title to additional parcels of southern California real estate [R. 319, Title Service Interpleader [R. 30], Home Investment Intervention [R. 247], O'Rourke Intervention [R. 486 and many others not included in the record on appeal].

On June 5, 1946, order No. 5309 of the Federal Home Loan Bank Administration was issued providing for a hearing on July 3, 1946, to be held before a hearing officer in Los Angeles [R. 94-96]. According to the order the Long Beach Federal Savings and Loan Association was authorized to appear and show cause why the conservator should not have been appointed and why an order should be entered by the administration discharging the conservator [R. 95]. The order provided that others could file a petition for leave to intervene if they wished [R. 95]. The order expressly provided that the hearing officer "shall not have power to decide any motion to dismiss the proceedings or other motion that involves final determination of the ultimate issue; . . . . but shall not have power to determine the ultimate issue; . . . ." [R. 95-96]. The order then provided that the hearing officer should send a complete transcript to the secretary of the Federal Home Loan Bank Administration, that is, the defendant-appellant Fahey's secretary.

On June 20, 1946, the plaintiff appellees filed in the district court their motion for a preliminary injunction to restrain this administrative hearing [R. 100-103]. This motion was based upon the assertions that the defendant-

appellant Fahey had no jurisdiction to conduct such a hearing, as the act under which defendant-appellant Fahey purported to order such hearing was unconstitutional and because the hearing would not be conducted in a fair and proper forum, and, as the defendant-appellant Fahey would be passing upon and adjudicating and determining the propriety and validity of his own acts, which he had already demonstrated were influenced by bias and prejudice and had been prejudged [R. 101], it was further alleged in the motion that such a hearing would damage the good will of the Long Beach Federal Savings and Loan Association, and the resultant publicity might start another "run" of withdrawals which might even exceed the previous run caused by the seizure at which time $6,000,000.00 had been withdrawn within a comparatively short time [R. 102]. This motion was supported by extensive affidavits [R. 104-124].

The defendant-appellant Title Service Company made a similar motion [R. 129-133] supported by a group of affidavits [R. 134-176]. The plaintiff-appellees on July 1, 1946, filed a motion for temporary restraining order [R. 236-239], supported by affidavit [R. 240-243], raising the additional point that at such an administrative hearing questions involving the constitutionality of the rules and regulations and acts under which the conservator was allegedly appointed [R. 238], and that, as such, an administrative hearing paralleling this action would constitute a multiplicity of the actions and be an encroachment on the jurisdiction of the district court.

The motion to restrain the administrative hearing was granted on July 1, 1946 [R. 244-245], and is still in effect through the adoption of the restraint in the decree of the

three judge court [R. 489-500], unless the order of this court staying execution of the decree [R. 506] has deprived the plaintiff-appellees of that protection.

After the statutory court had rendered its unanimious opinion holding Section 5(d) of the Home Owners Loan Act of 1933, as amended, unconstitutional, and ordering judgment to be entered in accordance therewith, findings of facts, conclusions of law and the decree herein were prepared and presented to all counsel also to the court and counsel for defendant-appellants A. V. Ammann and John H. Fahey objected thereto [R. 424].

In an endeavor to stop further depletion of the assets of the Long Beach Federal Savings and Loan Association, appellees joined in a motion for a temporary restraining order and preliminary injunction to prevent the appellants from interfering with the duly elected directors and officers in the proper management and operation of the Long Beach Federal Savings and Loan Association—which, if granted would have restored the Long Beach Federal Savings and Loan Association to its duly elected and proper management [R. 390].

Their motion was supported by numerous undenied affidavits [R. 386-424] showing irreparable injury being done the Long Beach Federal Savings and Loan Association [R. 756-757].

The defendant-appellants A. V. Ammann and John H. Fahey objected to the motion most strenuously, claiming the motion was in effect a request for an order of restoration of the management to the possession and control of the Long Beach Federal Savings and Loan Association and its assets, and that the single judge of the district court was without jurisdiction to hear and determine the

matters as it was an issue included within the opinion of the three judge statutory court [R. 756-757].

After an extended argument [R. 710-760] the district court adopted the theory advanced by counsel for the defendant-appellants A. V. Ammann and John H. Fahey and declined to issue its temporary restraining order and carefully based the denial of the motion upon lack of jurisdiction over a subject which had been heard and was then pending before the statutory three-judge court [R. 758].

Since substantially the same matters were contained in the decree which was subsequently entered [Decree Items 7, 8, 9, 10; R. 497-499] the plaintiff-appellees yielded to the reasoning advanced by the defendant-appellants A. V. Ammann and John H. Fahey and adopted by the one judge of the district court and took no appeal from his decision.

It would seem that this should have ended the dispute as to how broad the decree should be following a holding that Section 5(d) of the Home Owners Loan Act of 1933, as amended, was unconstitutional.

But apparently the defendant-appellants A. V. Ammann and John H. Fahey now want this court to adopt a different theory and to hold that the decree is too broad.

It appears that the defendant-appellants A. V. Ammann and John H. Fahey are inconsistent—to say the least.

The plaintiffs here constitute a Shareholder Members Protective Committee, suing as representatives of all

share holder members in the Long Beach Federal Savings and Loan Association [R. 1 and 4, Finding III; R. 494].

The defendant-appellant John H. Fahey was duly and regularly served with process and is a proper party defendant [Finding VIII, R. 495; Order, R. 45 and 46].

The only color of authority of the defendant-appellant A. V. Ammann, if any, to act as conservator must be bottomed on sub-section (d) of paragraph 5 of the Home Owners Loan Act of 1933, as amended [Finding VII, R. 494, 495; and Opinion, R. 375, 376].

The Home Owners Loan Act of 1933, as amended, when compared with other acts of Congress which have been held unconstitutional because of an attempt to delegate unlimited legislative authority, discloses that the said Home Owners Loan Act of 1933, as amended, fails to set up even as comprehensive or definite statements of policy, standards, guides, criteria or limitations as did such other enactments of Congress heretofore held to be unconstitutional by this court. Hence Section 5(d) of the Home Owners Loan Act of 1933, as amended, is unstitutional and void on the ground that it attempts to delegate unlimited legislative power to non-elective persons or boards [Opinion, R. 378].

From these simple facts, it is obvious that the defendant-appellants A. V. Ammann and John H. Fahey, appellants here, have shown by their acts that they considered the delegation of legislative authority under the provisions of Section 5(d) of the Federal Home Owners Loan Act

of 1933, as amended, to have been complete and unlimited, and to have vested them with absolute and unrestrained dictatorial powers, to have constituted a grant to them of a roving commission to inquire into evils, even imaginary, in solvent financial institutions and to take any action they might see fit, without formal order, notice, hearing or proceeding or due process of any kind whatsoever, even to the seizure, and reorganization, consolidation, merger, or liquidation of such mutual associations.

The statutory three judge trial court directed its attention primarily to the question of whether or not Section 5(d) of the Home Owners Loan Act of 1933, as amended, improperly delegates legislative power and is therefore unconstitutional. The only authority, if any there be, on which the acts cited herein can be justified, must be bottomed on sub-section (d) of Section 5 of the Home Owners Loan Act of 1933, as amended. It is on the direct operation of this statute that the defendant-appellants A. V. Ammann and John H. Fahey must rely. [Opinion, R. 375.]

The determination of this constitutional question is therefore, the only question of substantive law here involved (A. B. 2-3) and its determination would, of course, become the law of the case. If the unconstitutionality of this section is affirmed, other substantive questions in the cross-actions and interventions would be easily and quickly determinable, as, if the said Section 5(d) is unconstitutional, then the so-called Rules and Regulations

promulgated by the defendant-appellant John H. Fahey thereunder do not have constitutional support and are of no force and effect, and the so-called order purportedly appointing the defendant-appellant A. V. Ammann conservator is an unauthorized order and is void *ab initio*, leaving the defendant-appellant A. V. Ammann as a trespasser and interloper in the affairs of the Long Beach Federal Savings and Loan Association.

This position is substantiated by the fact that

> "an unconstitutional act is not a law; it confers no right; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed."
>
> *Norton v. Shelby Co.*, 118 U. S. 425.

it gives no rights and no powers of authority, and this conclusion is true irrespective of the pleas advanced by the defendant-appellant trespassers to distract the court's attention, such as pleas of estoppel, pleas that administrative remedies must first be pursued, pleas that the action should have been commenced in some jurisdiction other than that in which is situated the real property, title to which has been clouded, pleas as to who are or are not indispensable parties, or pleas that judgment cannot be entered without another, though useless, hearing.

All such pleas serve the purpose of abating the action only; they are not pleas in bar. Such pleas assert that a different form of procedure should have been followed,

instead of advancing some real defense to the substance of the litigation; they further serve only to distract the court's attention from the main important determinative issue—that of constitutional law.

The constitutionality of Section 5(d) here involved is not determined by whether or not the action was commenced in California or in Washington, D. C., nor is the constitutionality of the Section 5(d) affected by whether or not the defendant-appellant John H. Fahey was served personally in California, or was served under the court's order for service upon an absent defendant in Washington, D. C. Likewise the constitutionality of Section 5(d) is not affected by the answer to the question of whether or not the action was commenced by a so-called administrative hearing before a prejudiced tribunal which had prejudged the matter, or by whether it was or was not commenced in a regular duly constituted impartial United States statutory court of law and charged with the special duty of determining the constitutionality of acts of Congress. Constitutional law still exists and requires obedience to it, irrespective of such contentions; it is fundamental. Can this court feel that the determination of an administrative tribunal, appointed by and subservient to the defendant-appellant John H. Fahey, would affect or influence the decision of the District Court or of this court?

Even should defendant-appellants A. V. Ammann and John H. Fahey succeed in diverting this Honorable

Court's attention from the main issue, ultimately, either in this or in subsequent litigation, the constitutionality of Section 5(d) of the Home Owners Loan Act of 1933 as amended must be determined by this court. We suggest now is the time and here, the place.

Should the appellants succeed in their efforts to draw this court's attention away from the principal issue involved herein, that of constitutional law, into the determination of collateral secondary questions, the principal result would be that the defendant-appellants A. V. Ammann and John H. Fahey might succeed in retaining possession of the Long Beach Federal Savings and Loan Association and its assets as interloper trespassers for a substantial period of time, pending future litigation, which would thereby be made necessary in order to again raise and present to this Honorable Court the question of the unconstitutionality of Section 5(d).

The other result would probably be a further dissipation of assets. By that time there might well not be anything left for the conservator to conserve.

The defendant-appellants A. V. Ammann and John H. Fahey ask that this court require these respondents to seek a tortuous path rather than a direct road to the door of this court, where a final decision as to the unconstitutionality of this section may be made.

We therefore direct this court's attention first to the primary question of the unconstitutionality of Section 5(d) of the Home Owners Loan Act of 1933, as amended.

Argument.

Section 5(d) of the Home Owners Loan Act of 1933, as amended, the unconstitutionality of which is here under consideration, is as follows:

> "The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require a equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation." (Sec. 1464(d), Title 12, U. S. C., 4 F. C. A. 358.)

Plan of Argument.

Consideration on this appeal falls into three main classifications:

A.

Consideration of the unconstitutionality of Section 5(d) of the Home Owners Loan Act of 1933, *supra*.

B.

Numerous and various collateral procedural and jurisdictional questions attempted to be raised by the defendant appellants in an effort to divert this Honorable Court from passing upon and determining the unconstitutionality of the said Section 5(d) of the Home Owners Loan Act of 1933, *supra*.

C.

Severability: The Home Owners Loan Act is severable, both by specific provisions of the Act itself (Section 1468, Title 12, F. C. A. 361) and by virtue of prior decision of this Court. (*Hopkins Savings and Loan Association v. Cleary*, 296 U. S. 315, 335 (1935).)

Argument A.

Delegation of Legislative Functions Is Unconstitutional.

Section 5(d) of the Home Owners Loan Act of 1933, as amended, is unconstitutional.

I.

An Enactment Which Delegates the Unlimited Power to Make Laws Is Unconstitutional.

(a) Section 5(d) of the H.O.L.A. of 1933 as Amended (Sec. 1464(d) Title 12, U. S. C. Attempts to Delegate the Legislative Functions Reserved to Congress Without Providing Either Adequate or Any Statement of Policy, Standards, Limitations, or Criteria, to Guide the Administrator in Exercising Such Legislative Functions, All of Which Is Repugnant to Article I, Sec. 1, and Article I, Sec. 8, Paragraph 18 of the Constitution of the United States of America, and Contravenes Section 1 of the Tenth (Xth) Amendment to the Constitution of the United States.

"Section 1. All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives." (Article I, Sec. 1, Constitution of the United States.)

2. The power to make necessary laws is specifically included in the specific powers granted to Congress by virtue of the Constitution, as follows:

"18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States or

in any department or officer thereof." (Paragraph 18 of Section 8 of Article I.)

3. All other powers not specifically delegated to the federal government are reserved to the states or to the people themselves as specifically provided as follows:

"Section 1. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." (Sec. 1 of the 10th Amendment.)

From a reading of these sections of the Constitution and the Amendments it is readily apparent that the sole and exclusive power and authority for making of laws for the government of the people generally throughout the United States is vested in Congress and may not be delegated by Congress to any executive, administrative officer, board or commission, without prescribing a definite policy, standard or rule for their guidance in putting into effect and operation by administrative rules, the laws enacted by the Congress of the United States.

(b) Unrestrained Delegation of the Legislative Function Has Been Declared as Repugnant to the United States Constitution by Long Line of Decisions of this Honorable Court.

The function of the legislature may not be delegated by the Congress to the executive department or to any executive, administrative officer, board or commission without prescribing a policy, standard or rule for their guidance and the act must not vest them with an arbitrary or un-

controlled discretion with regard thereto, as to matters or persons to which the statute shall be applied.

Panama Refining Co. v. Ryan, 293 U. S. 388 (Jan. 7, 1935).

The Supreme Court there held that Section 9(c)—(Hot Oil Section)—of the National Industrial Recovery Act and the orders of the President of the United States made pursuant thereto, were unconstitutional and reversed the lower court's decision and remanded the case with directions to grant a permanent injunction, restraining the United States officers from enforcing the orders and regulations made under the Hot Oil Section, and the court stated (p. 421):

> "The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested." (Art. I, Sec. 1, and Art. I, Sec. 8, Par. 18, of the Constitution of the United States.).

A. L. A. Schechter Poultry Corp. v. U. S., 295 U. S. 495.

The Supreme Court declared that the National Industry Recovery Act, in its entirety, was unconstitutional as the attempted delegation of legislative power was repugnant to the Constitution of the United States and in the decision stated:

> "In so far as it purports to confer upon the President the authority to adopt and make effective codes of fair competition." (A form of rules and regulations. (p. 541.) "The Constitution provides that all Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist

of a House of Representatives and a Senate. (p. 529.) Art. I, Section 1 'and the Congress is authorized to make all laws, which are necessary and proper in carrying into execution' its general powers." (p. 529.) (Art. I, Sec. 8, Par. 18.) "The Congress is not permitted to abdicate or transfer to others the legislative functions with which it is thus invested." (p. 529.)

Butler v. U. S., 296 U. S. 561 (1936).

Declared the Agriculture Adjustment Act (U. S. C., Sections 608 and 609) unconstitutional because of the attempted improper delegation of legislative powers of the Secretary of Agriculture without a sufficient statement of standards and policies. (See p. 7.) The provisions of the sections involved are quoted on pages 3 and 4 of the decision in *Butler v. U. S.*; 78 F. (2d) 1, at 3 and 4.

> "*The Powers to determine what the law shall be, what property shall be affected by taxation or regulation and what standards shall govern the administrative officers in administering acts of Congress has never been held to be an administrative function.* The power to impose a tax and to determine what property shall bear the tax can only be determined by the legislative department of the government. If Congress undertakes to lay down a guide for administrative officers to enforce it in carrying out its mandate, it must be by an intelligible and a reasonable, definite standard." (Emphasis added.)

Butler v. U. S. was affirmed by the Supreme Court in 297 U. S. 1.

Carter v. Carter Coal Co., 298 U. S. 238 (1936).

Bituminous Coal Conservation Act of 1935 (49 Stat. 991, Ch. 824) was held unconstitutional in a suit by a stockholder to enjoin the corporation from submitting to legislative regulations which were unconstitutional.

> "Beneficent aims, however great, or well directed, can never serve in lieu of Constitutional Power." (p. 291.)

Note: The Act was rewritten and re-enacted with appropriate standards, safeguards, and criteria as the "Bituminous Coal Act of 1937 (50 Stat. 72) and was thereafter held to be constitutional in the case of *Sunshine Coal Co. v. Adkins,* 310 U. S. 381 (1940). (Justice McReynolds still dissented.)

The rewritten Act is a good example of a properly drafted Act providing the safeguards of due process, notice and prior hearings, before rules and regulations are adopted, also notice of charges, opportunity to be heard, impartial hearing and right to judicial review.

National Labor Relations Board v. Prettyman (1941, C. C. A. 6), 117 F. (2d) 786.

The National Labor Relations Act, 29 U. S. C., Sec. 151 *et seq.*, Sec. 160(e) of which authorizes the Circuit Court of Appeals to review the Board's acts. Proceeding was for enforcement of a "cease and desist" order issued by the board. Petition denied. (p. 788.)

> "The Court is not compelled to enforce an order of the Board which is impregnated with a hearing not conforming with the standards of fairness inherent in procedural due process." (p. 791.)

Walling v. McCracken County Peach Growers Assn., 50 Fed. Supp. 900 (1943, D. C. Ky.).

Fair Labor Standards Act (29 U. S. C. 206 and 207) was in part held unconstitutional and invalid in an action brought by the administrator to enjoin a violation of a regulation made thereunder. Judgment was for the defendant, the court stating:

> "When there is no rational connection between the declared policy of Congress and the regulation of the administrative body, the regulation can be declared invalid." (p. 905.)

Acts of state legislatures which attempt to delegate legislative functions without appropriate statement of policies, standards, criteria or guides are unconstitutional.

In re McLain, 190 Cal. 376 (1933).

Section of the California Motor Vehicle Act held unconstitutional, upon the ground that a man had the audacity to drive 28 miles an hour on the Colorado Street Bridge, entering Pasadena. Under the attempted delegation of power by the legislature, the State Highway Commission had fixed a lower speed limit. This delegation of authority was attacked and held to be unconstitutional (pp. 379-381), and the culprit was acquitted.

State v. Retowski, (1934, Del.), 175 Atl. 326, 6 W. W. Harr. 330.

Liquor Control Act of Delaware held unconstitutional as a grant of legislative powers without adequate safeguards. Criticized lack of publication of regulations also. (p. 329.) This decision also quoted with approval, from *Goodloe v. Logan*, 251 N. W. 35, 43 (Ia., 1933), which held unconstitutional Section 5066 of the Code of Iowa,

granting unfettered legislative authority to the Highway Commission, and in so doing stated at page 43:

"Thus, an analysis of every case cited by the appellant presents the situation only where the details of the statute are left to be administered by a board or commission in applying the law as expressed in the statute. If the legislature had a right to pass section 5066, granting to the highway commission the authority to adopt rules and regulations governing the stopping of cars upon a paved highway, the legislature can also empower the highway commission to pass rules and regulations governing the speed and right of way, and all duties of automobile drivers. If the legislature can delegate to the highway commission the right to do these things, then, of course, the legislature can delegate to the highway commission the same power to the board of control, to the insurance commissioner, superintendent of banking, and all other administrative departments of the state may be likewise empowered to enact rules and regulations to be given the force of statutes, which said commission might in their judgment determine to be for the general protection of the public. Once such bureaucracy has fastened itself into the life of legislative power, little else need be done by the legislature than to meet and create boards. The legislature has no such right to delegate to the highway commission legislative power to pass rules and regulations concerning the use of the primary highways of this state by the people of this state, such as Rule VII. If the legislature in its wise judgment desires to pass such a statute, it, of course, has the right and authority to do so, for the legislature is composed of the representatives of the people; it is chosen by the people for the purpose of making the

laws of this state. The legislature cannot transfer the power of making laws to any one else, or to place the right to make laws anywhere but where the people have placed it. The highway commission is appointed by the Governor of the state for the purpose of administering the laws and not for the purpose of making the laws. If the right were given to the highway commission to make the laws governing the highways of this state, how is the individual using the highways to know what rules and regulations the highway commission passes? The highway commission meets at various and different times. It might pass some rule or regulation today and revoke it next week. There is no way that the people throughout this state could know just what were the rules and regulations that the highway commission adopted. About the only way that one could be certain as to what rules and regulations were — if the highway commission had the right to pass them — would be to telephone to the highway commission every time one started on a journey, and if that journey were to be a long one, a wise and cautious individual would put in a telephone call before starting on the return journey.

"Thus, it seems to us that the legislature under Code No. 5066 has left to the highway commission first to say whether there shall be any law, and second, what that law shall be. This is a delegation of legislative power and same is unconstitutional. Thus the court erred in directing the verdict and the judgment of the lower court must be, and it is hereby reversed."

McDougal v. Lucider (1945), 389 Ill. 141, 156 A. L. R. 1059.

This decision involved the Illinois Community Currency Exchange Act, Ill. Rev. Stat. 1943, Chap. 16½, Par. 31 *et seq.*, which was attacked on the ground of improper delegation of legislative powers under Illinois Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution. Section 4, Sub-section (c), gave discretion to the Auditor of Public Accounts, and the Act contained no limitations as to what information the Auditor might require and that a license issued might be revoked at the whim of the Auditor (p. 1067).

Held unconstitutional (p. 1068); also held that the unconstitutional section was severable from the remainder of the Act. (p. 1068.)

Re Opinion of the Justices, 52 N. E. (2d) 974 (S. Ct. Mass., 1944), 150 A. L. R. 1482.

The delegation of blanket War powers to the Governor was there held to be unconstitutional.

State of N. J. v. Larson, 10 N. J. Misc. 384 (1932).

The State Aviation Act (Pamp. 4 (1931), Chap. 190, p. 475) was there held unconstitutional as the statute fixed no standard, guide, or criterion for the aviation commission in the establishment of its regulations for uniform field rules for airports, and hence is an unconstitutional attempt to delegate legislative power.

Hoff v. State (1938, Del.), 197 Atl. 75, 9 W. W. Harr. 134.

The Beauty Culture Act, Chap. 122, Vol. 40, Laws of Delaware, were held to be unconstitutional.

The decision quotes from Judge Ranney in *Cincinnati W. & Z. Ry. Co. v. Clinton County Comr's*, 1 Ohio St. 77, that:

> ". . . the true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority and discretion as to its execution, to be exercised in pursuance of the law." (p. 79.)
>
> "The Legislature must declare the policy of the law, and must establish some principle or rule of action which is to control in given cases. In other words the Legislature must provide an adequate yardstick for the guidance of the administrative body empowered to execute the law." (p. 79.) (Citing numerous authorities.)
>
> *Ohio Valley Water Co. v. Ben Aven;* 253 U. S. 287.

This decision holds the Pennsylvania Public Service Company Law of 1913 to be unconstitutional, as it improperly delegated to the commission unlimited rule making authority without requiring a judicial review.

Smithberger v. Banning, 129 Neb. 651.

The Emergency Relief Act of Nebraska was here attacked as being unconstitutional on the ground, among others, that the Act was in violation of the Nebraska Constitution, as it attempted to delegate legislative powers to the Congress of the United States and to the executive branch of the State Government.

The Act was held unconstitutional as an improper attempt to delegate legislative powers. (See p. 696.)

An excellent compilation of cases appears on page 691.

EVEN CITY ORDINANCES, WHICH ATTEMPT TO DELEGATE LEGISLATIVE AUTHORITY MAY BE HELD UNCONSTITUTIONAL.

Yick Wo v. Hopkins, 118 U. S. 356 (1885).

Yick Wo, and some eighty other Chinese, all subjects of the Emperor of China, ran laundries in San Francisco, and were denied licenses, although all white people, with the exception of one, were granted licenses by the board of supervisors under an ordinance which gave authority to the board of supervisors to grant or deny licenses. The case came to the Supreme Court on the sole question as to whether the plaintiff had been denied a right, in violation of the Constitution, laws, and treaties of the United States.

The Supreme Court held (p. 366) that the ordinance was unconstitutional as it confers:

> ". . . not a discretion to be exercised upon the consideration of circumstances of each case, but an Ordinance granting power to give consent not only as to place, but as to persons."

The ordinance was held to be in violation of the Fourteenth Amendment to the Constitution of the United States.

The court also held at page 369 that the ordinance was void, because its administration operated unequally.

Our government should be:

> "A government of Laws and not of man."

As recently as March 6, 1947, this Honorable Court has again recognized this historic phrase as expressing the aim of "those who framed the Declaration of Inde-

pendence and founded the Republic. 'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law as finally pronounced by this Court."

United States v. United Mine Workers, 91 L. Ed. (Adv. Op.) 595 (concurring opinion of Mr. Justice Frankfurter).

(c) Rule Is Continuous That Unlimited Delegation of Legislative Power Is Repugnant to the Constitution.

The decisions have universally recognized that there are limitations on the authority of a legislature to delegate its legislative functions, and acts are only to be upheld where Congress *or the legislature has, within the act itself declared a definite policy, established standards, limits, criteria or guides* to control the administrative authority in exercising the delegated rule making or fact finding authority.

Morgan v. U. S., 304 U. S. 1 (1938).

There was here involved an order of the Secretary of Agriculture, fixing maximum rates to be charged by market agencies pursuant to the "Packers and Stockyards Act 1921," 42 Stat. 159, 7 U. S. C. 181-229, which order was here held unconstitutional as a denial of due process in that the hearing held pursuant to the requirements of Section 310 of the Packers and Stockyards Act had not been a "full hearing," and the decision of the District Court composed of three judges, dismissing the bills of complaint, was reversed.

Dahlberg v. Pittsburg & L. E. R. Co., 134 F. (2d) (1943).

The Railway Labor Act of 1934, 45 U. S. C. A., Sec. 151 *et seq.*, was here under consideration as to the finality of the Labor Management Adjustment Board's decision, and in interpreting the act the court stated:

> "If the Act should be interpreted as precluding consideration of the merits of the Court, serious doubts as to the constitutionality would arise. Such interpretations would amount to investing the Board with full judicial power . . .
>
> "If it could be assumed that the Adjustment Board was a governmental agency, still other doubts as to the constitutionality would be present, for example, as to the question as whether there is such a lack of safeguards in the procedure before the Board as to be a denial of due process—there being no court review on the merits."

Decision of the District Court dismissing the complaints and declining to enforce the Board's award, affirmed.

> "In creating such an administrative agency the legislature, to prevent it being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function. It is a wholesome and necesary principle that such an agency must pursue the procedure and rules enjoined, and show a substantial compliance therewith to give validity to its action."

Wichita Ry. & Light Co. v. Public Utilities Company, 260 U. S. 48, 59.

Mahler v. Eby, 264 U. S. 32, 44.

The cardinal principle to be observed by legislatures in the granting of authority to administrative bodies to make rules and regulations having the effect of law is, *that there must be found in the law itself a reasonable clear formula by which the grantee of the power must be governed.*

(d) The Rule Has Been Uniformly Recognized Even in Decisions Upholding the Constitutionality of Acts Wherein There Has Been Delegated Within the Prescribed Limits or Policies the Rule Making Authority.

The courts have universally recognized that there are limits to the power of a legislature to delegate the legislative authority and that such delegation of the power to make laws is only to be upheld where the legislature or Congress has within the act declared a definite policy and has established standards or set forth requirements for findings of facts or conditions to be met by the administrative authority before exercising the delegated authority to make rules and regulations.

The Brig Aurora Burnside v. United States, 7 Cranch 382 (1813).

One of the earliest cases in commencing the evolvement of the rule of law which now and for the past more than one hundred years has been the established law of our land to the effect that only by providing within the act itself, a definite policy, standard, rule or criteria, is Congress permitted to delegate to others any of its essential legislative functions.

There the court held that Congress was permitted to delegate to the President the authority to make a finding of fact as to the friendliness or unfriendliness of the

nations, Great Britain and France, named in the act and by his proclamation to start or stop the operation of the machinery of the completely detailed embargo act of March 1, 1809, which was there under consideration.

Following the early decision of the *Brig Aurora* case as determined by the Supreme Court in 1813 came the decision of *Wayman v. Southard,* reported in 10 Wheaton 1 (1825), which particularly had to do with the right of Congress to delegate to the courts the power of altering modes of proceedings in suits, by rules, and whether or not the laws of Kentucky respecting executions had application to proceedings in the United States District Courts. In that decision the court early enunciates the rule that while the division between the legislative and judicial department has not been entirely or clearly determined, where the general provisions have been stated in an act, the power may then be given to those acting under the provision to "fill in the details."

Some years later this court again reiterated this same fundamental principle in the case of *Field v. Clark,* 143 U. S. 649 (1892). In holding a part of the Act of October 1, 1819, to be merely a delegation to the President of authority to make a finding of fact and not a delegation of legislative authority, this court therein stated:

> "The principle that Congress cannot delegate legislative power even to the President, is recognized as vital to the integrity and maintenance of the System of Government ordained by the Constitution."

and the court therein for that reason found that the act there being considered was "not inconsistent with that principle" and, therefore found it to be constitutional.

It is interesting to note that even so, Chief Justice Fuller and Justice Lamar dissented on the ground that

> ". . . no part of this legislative power can be delegated by Congress to any other department of the government, executive or judicial, as an axiom in constitutional law, and is universally recognized as a principle, essential to the integrity and maintenance of the system of government ordained by the Constitution. The legislative power must remain in the organ where it is lodged by that instrument." (p. 697.)

In considering the manner in which the policy, guides, criteria or standards of the legislative body may be established and the remainder of the duties delegated to the administrative tribunal, we are led to a consideration of the decision of *Buttfield v. Stranahan*, 192 U. S. 470 (1903). By the legislation therein considered, the Secretary of the Treasury was authorized to fix and establish uniform standards of purity, quality and fitness for consumption of all kinds of tea imported into the United States. The secretary was in such legislation authorized to procure and deposit in certain ports duplicate samples of standards which he might fix. In this decision the legislation was found to be constitutional, because the purposes of the act were expressed "to exclude the lowest grades of tea where demonstrable of inferior purity, or unfit for consumption, or presumably so because of their inferior quality." The court continues its opinion by stating as follows:

> "This, in effect, was the fixing of a primary standard, and devolved upon the Secretary of the Treasury the mere executive duty to effectuate the legislative policy declared in the statute."

Thus again we have an illustration of one class of cases in which authority may lawfully be delegated to admistrative or executive agencies or officials. Here the court found that a "primary standard" had been fixed in the legislation itself, and that merely the executive duty of determining what quality of tea did or did not come within that standard was delegated to the executive. This decision will illustrate the wisdom of the constitutional requirement that standards, guides, policies or criteria must appear in the legislation itself. Where such standards, guides, criteria or policies are present, the authority, actions and functions of the administrative agency are directed and controlled by the legislature, which is the proper governmental agency so to do. Without such standards, guides, criteria or policies being incorporated in the legislation itself, administrative action can and has run rampant and uncontrolled.

It is apparent that Section 5(d) of the Federal Home Owners Loan Act of 1933 as amended contains no such standards, criteria, guides or policies as will direct the administrator in the performance of his duties, as specified in said subsection.

Next in chronological order under this division of the plaintiff and appellees' brief having to do with the consistent rule of cases comes the so-called "bridge cases," which are, respectively:

Union Bridge Co. v. United States, 204 U. S. 346 (1907);

Monongahela Bridge Co. v. United States, 216 U. S. 177 (1910).

These two decisions confirmed the constitutionality of legislation by which the Secretary of War was given su-

pervisory authority over bridges crossing navigable waters, which might constitute a reasonable obstruction to free navigation. Both decisions followed the reasoning of the early cases that the executive branch of the government or an administrator might validly be given authority by Congress to administer an act so long as sufficient standards were contained in the legislation itself. The latter of these two cases contains the appropriate statement by the court as follows:

> ". . . That the statute in effect prescribed the general rule, applicable to all navigable waters, that free navigation should not be hampered by unreasonable obstructions arising from bridges of insufficient height, width of span or other defects; that instead of exerting its power by direct legislation in each case of a bridge alleged to constitute an unreasonable obstruction to navigation, Congress charged the Secretary of War with the duty of ascertaining, in each case, upon notice to the parties concerned, whether the particular bridge came within the general rule prescribed. . . ." (pp. 192-193.)

In *St. Louis, Iron Mountain and Southern Railway Co. v. Taylor, Admx.*, 210 U. S. 281 (1908), was involved the question of whether or not Section 5 of the Safety Appliance Act improperly delegated to the American Railway Association and the Interstate Commerce Commission the right or power to designate and promulgate appropriate standards for the height and maximum variation of draw bars for freight cars. In that decision again this court consistently with prior determinations found that only determination of minor detailed administrative acts was involved. Likewise, the court in this decision took the posi-

tion that the act was constitutional and was not an improper delegation of legislative functions because the standards, guides, criteria and policies had been indicated to the American Railway Association and the Interstate Commerce Commission by express terms in the legislation itself.

The next three cases in chronological order are:

U. S. v. Grimaud, Same v. India, 220 U. S. 506 (1910);

Red "C" Oil Manufacturing Co. v. Board of Agriculture of North Carolina, 222 U. S. 380 (1911);

Interstate Commerce Commission v. Goodrich Transit Co.,

Interstate Commerce Commission v. Same, U. S. v. White Star Line, U. S. v. Same, all reported as 224 U. S. 194 (1912).

These decisions reported in 1910, 1911, and 1912, respectively, show the geographical and historical developments taking place in our county at about that time. The first case involved legislation containing copious recitals which indicate the purpose of the act, such as to improve and protect the national forests, furnish a continuous supply of timber, protect the forests against destruction by fire, etc. In that case, the Secretary of Agriculture was expressly authorized to promulgate rules and regulations, one of which, No. 45, required persons to obtain permits before grazing cattle on the reservations. The general purposes, interests, criteria, standards and policies of the act being clear, sufficient and appropriate, the court stated that the delegation of rule-making power to the Secretary

concerned only the means of providing the various details of management, and, in view of the plentiful legislative standards appearing in the act; held that the legislation was constitutional, thus complying with the long established consistent rule requiring the legislative body to take over those details which the act might lawfully delegate.

In *The Red "C" Oil Manufacturing Company* case attack was made upon legislation authorizing the Commissioner of Agriculture to make rules and regulations for inspection of oil, adopt standards of safety, purity thereof, etc. This authorization immediately followed a section of the act in which were recited the purposes of the legislation, namely, that of determining their safety and value for illuminating purposes. The court very appropriately, through Chief Justice White, stated that the legislative requirement being that illuminating oils furnished in North Carolina should be safe, pure, and afford a satisfactory light, it was left to the Board of Agriculture to determine what oils would measure up to these standards. Citing *Buttfield v. Stranahan,* 192 U. S. 470, 492, the court stated as follows:

> "We think a sufficient primary standard was established, and that the claim that legislative powers were delegated is untenable."

Likewise in *Interstate Commerce Commission v. Goodrich Transit Company,* 224 U. S. 194, attack was made on orders of the Interstate Commerce Commission authorizing certain types of accounting by concerns engaged in interstate commerce and denying the right to use others. From the decision it appears that the act itself describes in detail what accounting reports shall contain, and in

other ways establishes the required primary standard. Such legislation and the action of the commission under it was held to be in keeping with the uniform rule of constitutional law in the following paragraph:

> "The Congress may not delegate its purely legislative power to a commission, but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress." (p. 214.)

Following the consistent rule again in *Philadelphia Co. v. Stimson*, 223 U. S. 605 at 638 (1912), it was held that the Secretary of War could lawfully be authorized to establish harbor lights where it had been made manifest to him that such establishment is essential to the preservation and protection of harbors. Likewise in this legislation the primary standard had been established in the legislation itself, which served as a guide to the actions of the administrative official.

The first world war gave rise to the next two decisions: *Selective Draft Law Cases*, 245 U. S. 366 (1918) and *McKinley et al v. United States*, 249 U. S. 397 (1919). The former of these two cases involved the authority of the federal government to delegate to the President of the United States the power, in his discretion, to temporarily or permanently enlarge the number of men carrying arms for this country. In fact, the force of the act was promulgated by a proclamation of the President. By the time the litigation in the first case was commenced, the United States was well into the first world war, and

the contentions of the objectors to the selective service act were handled in summary fashion. Therefore, in this decision and the immediately following decision of *McKinley et al. v. United States*, the court quickly stated its position that the question had been determined by previous decisions of this court, and that in the first case the delegation was properly made as has been indicated previously and that, in the second case the secretary of War having been directed to do all things necessary to preserve and protect the morals of the servicemen, it was well within the delegated powers of his office as such Secretary of War to provide that any houses that might taint their morals should not be located within a limited number of miles of a military camp.

A somewhat different approach to the same problem is made in the case of *Avent v. United States*, 266 U. S. 127 (1924). In the act involved in this decision the Interstate Commerce Commission was authorized by the Transportation Act of 1920 to suspend its rules as to certain services and to make other rules regarding such "as in the Commission's opinion will best promote the service in the interest of the public and the commerce of the people." The Interstate Commerce Commission therefore, after a considerable investigation and full recitals, in its order directed that certain coal cars be furnished to miners in keeping with the prescribed order. The court held the act consitutional and stated its appropriate conclusions as follows:

> "The statute confines the power of the Commission to emergencies, and the requirement that the rules shall be reasonable and in the interest of the public and of commerce fixes the only standard that is practicable or needed." (p. 130.)

Readjustment following the first world war gave occasion to the holding in *United States v. Chemical Foundation, Inc.*, 272 U. S. 1 (1926). There the President of the United States was given authority to manage property of the alien property custodian, make disposition thereof, etc., pursuant to such rules and regulations as he might prescribe and through such officers as he might direct. This delegation was held to be a proper and constitutional assignment of authority to the President, in keeping with the general and consistent rule, particularly because the detailed circumstances of each seizure and disposal of property seized must be ascertained in order to deal with it. In delegating such authority to the President and further providing that property, except that sold to the United States, shall be sold only to American citizens at public sale to the highest bidder after public advertisement, unless the President stating the reasons therefor, in the public interest shall otherwise determine, the court concluded that the actions of the President were not legislative but were actions of an administrative nature performed by him under an act, and particularly stated the generally applicable rule in the following language:

> *"The determination of the terms of sales of enemy properties in the light of facts and conditions from time to time arising in the progress of war was not the making of a law; it was the application of the general rule laid down by the Act. When the plenary power of Congress and the general rule so established are regarded, it is manifest that a limitation upon the excepted class is not a delegation of legislative power."* (Emphasis added.) (p. 12.)

J. W. Hampton, Jr. & Company v. U. S., 276 U. S. 394 (1928).

Here was involved the constitutionality of an act of Congress which authorized the President, upon investigation, etc., to vary the duties on imports so as to equalize the cost of producing and marketing foreign-grown commodities with competing commodities grown and marketed in our own country. The court here also follows the general and consistent rule that standards, guides, etc. sufficient for the occasion were found in the legislation, as follows: to equalize the cost of production in the United States with that of a foreign country and to protect domestic commerce against competition by imported products from foreign countries where the cost of producing is much less than that in our own country. It is further to be observed that in this legislation the items which the President must consider in fixing the duties were expressly specified, that is, the difference of conditions of production, including wages, costs of material, etc. The court again reiterated the usual and consistent rule in the following language:

> "If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power." (p. 409.)

The decision of *New York Central Securities Corporation v. United States, et al.*, 287 U. S. 12 (1932), involved the constitutionality of an amendment to the Interstate Commerce Commission. Here the commission was authorized to perform certain acts and to promote acquisition of control of one carrier by another, and other consolidations, when certain facts were found by them to exist. Likewise the court in this decision, citing cases

referred to above, concludes that sufficient policies, criteria and standards are included in the act, and holds it constitutional, particularly because of its conclusions in the following quoted language:

> "The provisions now before us were among the additions made by Transportation Act, 1920, and the term 'public interest' as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred." (p. 25.)

In 1933 this Court decided the case of *Federal Radio Commission v. Nelson Brothers Bond & Mortgage Co.* (Station WIBO), 289 U. S. 266 (1933), in which the opinion was written by Chief Justice Hughes. It appears that the Station WIBO was owned by the applicants, Nelson Brothers Bond & Mortgage Co., who with other requested modification of licenses from the Federal Radio Commission. Under the act the licensing authority that is the Federal Radio Commission was directed to make and maintain fair and equitable allocation of broadcasting licenses, of bands of frequency or wave lengths, periods of time for operation, station power etc.

Again, the Court indicates that in view of the numerous standards and guides included there was no improper delegation of authority. In other words the Act expressly instructs the Commission to make these allocations "according to population" and the Act furthermore contains an expressed decision, "That the people of all

the zones established by section 2 of this Act are entitled to equality of radio broadcasting service, both of transmission and of reception," and the Act further expressly provides that, "in order to provide said equality the licensing authority shall as nearly as possible make and maintain an equal allocation of broadcasting licenses, of bands of frequency or wave lengths, of periods of time for operation, and of station power, to each of said zones when and in so far as there are applications therefor; . . ."

After considering all the immediate foregoing standards found in the Act itself indicating the matter in which the authority must administer the Act, the Court considering the question of improper delegation states as follows.

> "In granting licenses the Commission is required to act 'as public convenience, interest or necessity requires.' This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power. Compare N. Y. Central Securities Co. v. United States, 287 U. S. 12, 24. The requirement is to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character and quality of services, and, where an equitable adjustment between States is in view, by the relative advantages in service which will be enjoyed by the public through the distribution of facilities. In making such an adjustment the equities of existing stations undoubtedly demand consideration. They are not to be the victims of official favoritism. But the weight of the evidence as to

these equities and all other pertinent facts is for the determination of the Commission in exercising its authority to make a 'fair and equitable allocation'." (p. 285.)

Chronologically, and in considering the consistent rule of the cases concerning delegation of legislative authority, we should now consider the two opinions written last fall entitled *North American Company v. Securities and Exchange Commission*, 90 L. Ed. Adv. 737 and *American Power and Light Co. v. Securities and Exchange Commission*, 91 L. Ed. Adv. 89.

The foregoing decisions considered under the instant point of our brief concern the consistent rule that in order for a delegation of legislative authority to be valid and constitutional, it is essential that guides, standards or criteria be included directing or indicating to the delegatee, the executive or administrative body the manner in which the authority or legislation so delegated may be exercised. It is submitted that the consistent rule that such standards, criteria, policies or guides must, in a pertinent and appropriate manner, indicate to the person or organization to whom the authority is delegated generally the purposes for which, or the matter in which, his actions shall be carried out. The purpose for such requisite is clear; it will serve to prevent unbridled "roving commissions" from using federal authority in an unconstitutional and an unamerican manner.

From first to last the decisions of this Court on this particular point are consistent with the rule which has prevailed since *The Brig Aurora* decision in 1813.

The Court consistently applies the rule and in the two opinions shows that acquired criteria, standards and guides are present. Counsel for plaintiffs, appellees, have endeavored to illustrate the difference between the Public Utility Holding Company Act and the particular sections thereof under attack in Securities and Exchange Commission cases and the Home Owners Loan Act of 1933 involved in the instant appeal. This has been done by a comparison of the parallel provisions, if any there are, in the two acts concerning due process and particularly the point under special consideration here namely, that of delegation of legislative authorities. The Court will readily and visually perceive that the Home Owners Loan Act of 1933 and particularly section 5(d) thereof contains none of the guides, standards, criteria and policies as are included in the Public Utility Holding Company Act. The Court will further observe the absence of provisions of due process from the Home Owners Loan Act of 1933, which are readily appreciable as being in the Public Utility Holding Company Act.

The most recent decisions of similar import are those of the Court in the cases of *North American Company v. Securities and Exchange Commission*, 90 L. Ed. Adv. Op. 737 and *American Power and Light Co. v. Securities and Exchange Commission*, 91 L. Ed. Adv. Op. 89, both of which attack the Public Utility Holding Co. Act, 15 U. S. Code, Sec. 79k(b) also known as Section 11(b) of the Act. The first cited case had to do with subdivision (1) and the second with subdivision (11) of that Act. The

Public Utility Holding Company Act is clearly distinguishable from the Home Owners Act as can readily be seen from the appropriate provisions quoted below:

COMPARISON OF CONSTITUTIONAL REQUIREMENTS FOR LEGISLATIVE POLICIES, STANDARD AND DUE PROCESS.

PUBLIC UTILITY HOLDING CO. ACT.	HOME OWNER'S LOAN ACT OF 1933
Sec. 11(b) 1 and 2 also 15 U. S. C., Sec. 79k.	12 U. S. C. Sec. 1464, also Sec. 5 of Act.
Sec. 11(b)(1), *i. e.*, sec. 79k(b) of Title 15 U. S. C. is attacked in *North American Co. v. Securities and Exchange Commission*, 90 L. Ed. Adv. Op. 737. The Section reads as follows:	Board authorized to prescribe rules Section 5(a) (1464(a)):
"(b) Limitations on operations of holding-company systems.—It shall be the duty of the Commission, as soon as practicable after January 1, 1938:	"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States.
(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public utility system; Pro-	

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vided, however, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems can not be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of each additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to im-

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Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) (1464(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

pair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

Sec. 11(b)2; Sec. 79k (b)(2) of Title 15 U. S. C. is attacked in *American Power and Light Co. v. Securities and Exchange Commission*, 91 L. Ed. Adv. Op. 89.

The section reads as follows:

"(2) To require by order, after notice and op-

portunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holdings, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of

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fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company, or of any company whose principal business is that of a public-utility company.	
The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24 (Sec. 79 of this title)."	
The subject of hearings by the Commission is set forth in Sec. 19 (79a):	
"Hearings by Commission.—Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers	No corresponding provisions.

PUBLIC UTILITY HOLDING CO. ACT.	HOME OWNER'S LOAN ACT OF 1933
of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State, State commission, State securities commission, municipality, or other political subdivision of a State, and may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers. (Aug. 26, 1935, c. 657, Title I, Sec. 19, 49 Stat. 832.)	
A court review of orders is prescribed in Sec. 24 (79x):	
"Court Review of orders.—(a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals	No corresponding provisions.

of the United States within any circuit wherein such person resided or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any offer thereof designated by the Commission for that purpose and thereupon the Commission shall certify and file in the court a transcript of record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Com-

mission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its rec-

ommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended, 28; 346, 347.)

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. (Aug. 26, 1935, c. 687, Title I, Sec. 24, 49 Stat. 834.)

The District Courts are expressly given jurisdiction of offenses and suits in Sec. 25(79y):

"Jurisdiction of offenses and suits. The District Courts of the United States, the District Court of Columbia, and the United States courts of any Terri-

No corresponding provisions.

tory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought

in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C Title 28, secs. 225 and 347) (26: 225, 347), and section 7, as amended, of the Act entitled "An Act to Establish a court of appeals for the District of Columbia," approved February 9, 1893 (D. C. Code (1929), Title 18, sec. 26), (D. C. Code 1940, Sec. 17-01). No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court. (Aug. 26, 1935, c. 687, Title I, Sec. 25, 49 Stat. 835.)

In the first of the two cases recently decided, that is *North American Co. v. Securities and Exchange Commission, supra,* the constitutionality of Sec. 11(b) 1 was questioned from the standpoint of the due process clause of the fifth amendment in that there was a taking of property without just compensation. This court answered that argument by stating at page 749 that there was "no basis here for assuming that in limiting the scope of North American's operations there will be dispositions of securities for inadequate considerations, thereby raising a question as to whether there is a destruction of these values without just compensation. The Act does not contemplate or require the dumping or forced liquidation of securities on the market for cash. Under section 11(d) and 11(e) of the Act, an "investment or reorganization plan must meet the standards of fairness and equitableness." Then on page 750 the opinion continues: "Any plan of divestment or reorganization, moreover, must be carefully scrutinized by both the commission and the enforcing court, thus enabling the assertion and protection of all shareholders' rights. (See *Otis & Co. v. Securities and Exchange Commission*, 323 U. S. 624.) And there are provisions in the Act guarding against unduly rapid divestment or liquidation. In the light of such statutory and judicial safeguards and in the absence of any alleged unfair plan of divestment we cannot say that the North American's shareholders are adversely affected, from a constitutional viewpoint, by the operation of section 11(b)(1)." It should be noted in this connection that under section 11(c) holding companies are given at least a year to comply with an order of the commission under section 11(b).

The second case, that of *American Power and Light Co. v. Securities and Exchange Commission, supra,* is concerned with the constitutionality of section 11(b)(2) and has to do with the same combination of utility companies. The following are extracts from the opinion:

"Necessity therefore fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules; it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority. Private rights are protected by access to the courts to test the application of the policy in the light of these legislative declarations. Such is the situation here." (p. 99.)

"The legislative policies and standards being clear, judicial review of the remedies adopted by the Commission safeguards against statutory or constitutional excesses." (p. 99.) Judicial review was provided in Act (Sec. 25).

"Equally groundless is the contention that sec. 11(b)(2) is void in the absence of an express provision for notice and opportunity for hearing as to security holders regarding proceedings under that section. The short answer is that such a contention can be raised properly only by a security holder who has suffered injury due to lack of notice or opportunity for hearing. No security holder of that type is now before us. The managements of American and Electric admittedly were notified and participated in the hearings as required by sec. 11(b)(2)." (p. 99.)

"However, the Commission in this instance actually gave all security holders of American and Elec-

tric public notice of the pendency of the sec. 11(b)(2) proceedings and invited them to file applications for intervention before a stated time. This was done pursuant to sec. 19, 15 U.S.C.A. Sec. 79a." (p. 100.)

PUBLIC UTILITY HOLDING CO. ACT CASES ARE CONSISTENT WITH PRIOR DECISIONS.

Counsel for defendant appellants have cited variously in their brief (A. B. 24, 32, 59, 66, 73, 76, 84, 88) excerpts from the opinion of this court in *American Power & Light Co. v. Securities & Exchange Commission*, Nos. 4 & 5, this Term, decided Nov. 25, 1946, as indicating that the established law had been overthrown and that as a result of this opinion it is no longer true that legislative enactments had to contain standards, guides, policy, or criteria appropriate and pertinent to the ends to be accomplished by the administrative agency concerned.

We submit this as not so. The Act under attack there, the Public Utility Holding Company Act, contained within it many standards and directives as shown by the chart above, and when Mr. Justice Murphy used the words "But these standards need not be tested in isolation." (91 L. Ed. Adv. Op. 89 at 98.) The following words should be read with this statement to gain its true meaning. These words are "They derive much meaningful content from the purpose of the Act, its factual background and the statutory context in which they appear . . . the general policy declarations of Congress in section 1(c); the standards for new security issues set

forth in section 7 . . . the conditions for acquisitions of properties and securities as described in section 10 . . . and the nature of the inquiries contemplated by section 11(a) . . . a veritable code of rules reveals itself for the Commission to follow in giving effect to the standards of section 11(b)(2) . . . it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority. Private rights are protected by access to the courts to test the application of the policy in the light of these legislative declarations. Such is the situation here." It therefore follows that rules, standards, etc., were present in The Public Utilities Holding Company Act in sufficient detail to accomplish the ends prescribed for the administrative agency. It is not believed that the use of the words "standards need not be tested in isolation" means anything but what it states. In the present case there are no standards to be found anywhere in the Act and as the presiding judge of the trial court stated in his opinion the Act in the present case "makes no attempt to lay down rules for the guidance of the board, nor does it state in what circumstances or under what conditions the board is to merge institutions or to appoint a conservator or receiver. It establishes no criteria to govern the board's course. It does not require any finding by the board as a condition of its action, nor policy as declared by Congress as to merger or appointment of a conservator. The section gives to the Board unlimited authorization to formulate rules for the board's action in the respects mentioned and to so do as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to

govern itself. We are unable to find in the Act a declaration of policy or standard of action which can be deemed to relate to the subject of section 5(d)." [R. 377.]

Although the *American Power and Light Co.* decision, *supra*, was rendered subsequent to the opinion of the court below, it is to be noted in the last quoted words from the opinion of the trial court that it did not look only to section 5(d) to find a declaration of policy or a standard of action, but it showed that the statutory three judge court had examined the Act as a whole for such declaration and could not find any . . . there is none.

The H.O.L. Act as a whole is as lacking in directives as is Section 5(d) taken as an "isolated" section.

The opinion in the *American Power and Light Company* case, *supra*, is not taken to mean that the administrative guides are to be taken from the history or origin of the Act but rather that statements of legislative policy and standards found within the Act may be interpreted in the light of the history or origin of the Act. It is still the rule that an unbridled delegation of legislative authority is repugnant to the constitution. In this respect the Home Owners Loan Act is fatally defective under the opinion in the *American Power and Light Company* case as well as in all previous decisions of the court on the subject. It is further submitted that it is also still the rule and not changed by these recent decisions that such guides as may be provided by Congress must be sufficient to indicate the intention of the legislature and must not constitute solely "a roving commission" for the

administrative official to do what he wishes when and in whatever manner he wishes, or for whatever reason personal or otherwise he may have, at the time he does it.

It is further believed that if Congress provided guides, standards, criteria or other directives, they must in some way be suited to the problems under consideration; simple problems require simple rules. A legislative directive might be sufficient to provide regulations to authorize a stock issue, but the same directive might well be insufficient to justify a conviction of a felony or the deprivation of the life earnings of 16,000 people. The legislative guides which might be sufficient to provide for a summary seizure of an insolvent institution might well not be sufficient to provide for the seizure of a solvent institution. In one case an emergency might require summary action where as in the other case, no emergency might be present and due process would require more deliberate action. There should be some casual connection between the standards given and the authority granted. Variations in factual situations might appear to give rise to inconsistencies in the previous opinions of this court but it is believed that underlying them all the fundamental doctrines are the same and that the principles so ably enumerated in the *Schechter Corp. v. U. S.*, 295, U. S. 495, and *Panama Refining Co. v. Ryan*, 293, U. S. 388 are, and always have been the law, from the time of the opinion of this court in 1813 in the case of the *Brig Aurora Burnside v. U. S.*, 7 Cranch, 382, down to the present time.

(e) Comparison With Other Acts Which Have Been Heretofore Declared Unconstitutional Due to the Delegation of an unfettered Legislative Authority.

Other legislative acts containing more comprehensive and more definite statements of policy, standards, guides, criteria, and limitations as to the legislative rule making functions being delegated, than does this the Federal Home Owners Loan Act of 1933, have been declared unconstitutional as delegating unfettered legislative authority.

We have searched the entire Home Owners Loan Act of 1933 and find that the Act wholly fails to make any adequate statement of expressed congressional policy, as to the things enumerated in paragraph (d) above, to wit: "reorganization," "consolidation," "merger," "liquidation," "appointment of a conservator or receiver," "readjustment of capital," "release of control of an association."

In regard to the subject matters above enumerated, the Act wholly fails to set forth any standards, nor does it even purport to lay down a guide to administrative officers to enforce it in carrying out its mandate.

The Act wholly fails to provide for any notice for the doing of any of the enumerated acts, nor does the Act provide for hearings of any kind, nor does it require any findings of fact of insolvency, nor of imminent peril of insolvency, nor of imminent peril of any character. No findings of fact of any kind are required upon which to base the "board's" unfettered actions.

The Act wholly fails to provide any formula or criteria for determining for what, when, upon what basis, or in what manner, such rules and regulations, to be made by

the so-called "Board" (composed of one man), are to provide for the doing of any of the enumerated acts of:

1. Reorganization.
2. Consolidation.
3. Merger.
4. Liquidation.
5. Appointment of a conservator.
6. Appointment of a receiver.
7. Equitable adjustment of the capital structure.
8. Release from control.

The Act here in question attempts to delegate to the "Board" *Full Power* to provide in the rules and regulations for all of such matters and the legislative authority so attempted to be delegated is unfettered by any limitation whatsoever expressed in the Act.

The delegation of the legislative functions here attempted is far greater and much more "unfettered" than was the attempted delegation of legislative functions in the following acts, which have been declared unconstitutional as containing an improper and unlimited delegation of the functions reserved to the legislatures and Congress, to wit:

National Industrial Recovery Act, Sec. 9(c) (Hot Oil) Title I, 48 Stat. 195 (15 U. S. C. Title I 709(c)) was declared unconstitutional in part in the case of:

Panama Refining Co. v. Ryan, 293 U. S. 388 (1935), and the entire N. I. R. Act (48 Stat. 195) was declared unconstitutional in the case of:

A. L. A. Schechter Poultry Co. v. U. S. (May 1935), 295 U. S. 495, upon the ground that the Act (1935)

was an unconstitutional delegation of legislative powers to be exercised by the President in his unfettered discretion, even though the Act itself provided an expressed declaration of congressional policy, quoting from the Act in part as follows:

> "to remove obstructions to the free flow of interstate and foreign commerce . . . and to provide for the general welfare by promoting the organization of industry . . . and to maintain united action of Labor and Management . . . to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industry . . . to increase the consumption . . . by increasing purchasing power . . . to relieve unemployment . . . to improve standard of labor . . . to rehabilitate industry and to conserve natural resources." (p. 195.)

And the Act there was limited as to time of duration, *i.e.*, during emergency, but not to exceed two years (p. 196), and required the President to make a prior finding of fact that the "groups" have no limitations on membership and "are truly representative of such trades" and that the proposed Code (rule or regulation) will not "promote monopolies" and will tend to effectuate the "policy of this title" (p. 196) and the N. I. R. Act affords persons affected an opportunity to be heard "prior to approval by the President of such Code or Codes." (p. 196.)

The N. I. R. Act specifically "invested with jurisdiction" the district courts of the United States to restrain violations and delegated the prosecution thereof to the local United States District Attorney. (p. 196.)

The Act provided for investigation by the Tariff Commission and for public notice and hearing to be specified by the President, where foreign commerce was involved. (p. 197.)

The Act provided for "due notice and opportunity for hearing, for violations of the terms or conditions thereof", *i. e.* of licenses before suspension or revocation. (p. 196.)

Further the N. I. R. Act prescribed the conditions to be contained in the "Codes of fair competition" as to employes' hours and wages. (p. 198.)

The N. I. R. Act provided for investigation and hearing before fixing wages and hours codes. (p. 199.)

The N. I. R. Act, like the instant Home Owners Loan Act of 1933 delegated the authority to "prescribe rules and regulations" to the executive "to carry out the purposes" of the Act. (p. 200.)

Yet, in spite of this expressed though general statement of policy which was far more specific than in the instant act, and in spite of all of the standards, guides, notices and hearings, and opportunities to be heard, and even though the jurisdiction of the district courts was specifically set forth and conferred, which standards, guides, notices, hearings, and opportunities to be heard are absent from the instant act, the National Industrial Recovery Act was declared unconstitutional because of the "attempted delegation of legislative power." (*Schechter Corp. v. U. S.*, 295 U. S. 495 at 551.)

[See Appendix A.]

Agricultural Adjustment Act, 7 U. S. C. Sec. 608-609 (48 Stat. 31) (1933) was held unconstitutional in the cases of:

Butler v. United States, 78 F. (2d) 1 (1935), as this Act among other things "is an unwarranted delegation of the legislative power granted exclusively to Congress", and the case was affirmed in:

United States v. Butler, 297 U. S. 1 (1935).

Furthermore the A. A. Act was likewise and on the same ground held to be unconstitutional in:

Chester C. Fosgate Co. v. Kirkland, 19 F. Supp. 152 (1937 Florida).

and this ruling of the court was given in spite of and even though the A. A. Act provided a specific and extended:

(a) Declaration of Emergency, Sec. 1 (p. 31.)

(b) Declaration of Policy, Sec. 2,

and even though the Act did establish specific periods for basic prices (p. 32) and specified in detail the powers being delegated to the Secretary of Agriculture and did provide for notice and hearing *before* entering into marketing agreements (p. 34). and *before* suspending or revoking licenses did require due notice, hearing and findings. (p. 35.) The A. A. Act establishes a formula for determining the rate of tax (p. 36.) Furthermore the secretary is authorized: "to make such regulations . . . as may be necessary to carry out the powers vested in him by this title, . . ." [See Appendix B.]

None of the specified statements of policy, standards, formula, for determination of executive action, of the

Agricultural Adjustment Act declared unconstitutional can be found in the Federal Home Owners Loan Act of 1933, because neither standards, criteria nor formula are expressed therein. Instead, we find therein only a blanket delegation of legislative authority to make rules and regulations, to consolidate, merge, liquidate, etc., leaving thriving successful savings and loan associations subject only to the unfettered whims of the commissioner, the defendant appellant Fahey.

The Bituminous Coal Conservation Act of 1935, 49 Stat. 991, Ch. 824 was held to be unconstitutional in:

Carter v. Carter Coal Co., 298 U. S. 238 at p. 311 (1936).

In this legislation,

> "The delegation (of authority is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this Court, which foreclose the question. A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. at page 537, 79 L. Ed. 1584, 55 S. Ct. 837, 97 A. L. R. 947; Eubank v. Richmond, 226 U. S. 137, 143, 57 L. Ed. 156, 159, 33 S. Ct. 76, 42, L. R. A. (N. S.) 1123, Ann. Cas. 1914 B, 192; Washington *ex rel.* Seattle Title Trust Co. v. Roberge, 278 U. S. 116, 121, 122, 73 L. Ed. 210, 213, 214, 49 S. Ct. 50, 86 A. L. R. 654." (Interpolation added.)

Yet the Bituminous Coal Conservation Act sets forth a comprehensive declaration of necessity for the regulation (p. 991), established a commission of five members

to whom were delegated rule making powers "for carrying out the provisions of this Act" (p. 992), and specifically provided for the hearing of evidence and making findings of fact. (p. 993).

The Act even established an office of consumers counsel, to be appointed by the President, to present evidence on behalf of consumers, in matters pending before the commission. (p. 993.)

The Act further provided for establishment of schedules, (p. 996), promulgation of rules and regulations which may be appealed from districts to the full commission (p. 999), due notice and hearings in matters having to do with preliminary orders (p. 998), review of commission orders (p. 1001), findings of fact after notice and hearing (p. 1001-1002), cease and desist orders (p. 1002), and review by circuit court of appeals from commission orders (p. 1003). [See Appendix C.]

National Labor Relations Act, 29 U. S. C. A. Sec. 151 to Sec. 160 (e) of Act.

Enforcement was refused by the court in the case of:

National Labor Relations Board v. Prettyman, 117 F. (2d) 786 (1941 C. C. A. 6),

even though the Act of Congress itself provides for the finding of necessity, declares a definite policy (Sec. 151), grants to the board authority to make "rules and regulations" to carry out the provisions of the Act (Sec. 156), defines "Unfair labor practices" (Sec. 158), provides for "appropriate hearings upon due notice" and "petition for the enforcement or review of such order" (Sec. 159), provides for complaint for charge of unfair

labor practice and for notice, answer, hearing, provides that rules of evidence in courts of law, shall apply, provides for transcript of testimony, findings of fact, order, and for appeal to courts for review of order, etc. (Sec. 160) including other provisions to compel production of evidence and for process, subpoena, witnesses, and generally sets up in the Act itself, a comprehensive procedure.

Although the National Labor Relations Act has not been declared unconstitutional, as a whole; the court in the case of:

National Labor Relations Board v. Krettyman (supra),

did refuse to enforce the orders of the board, as the court indicated due process had not been sufficiently protected.

A comparison of the National Labor Relations Act with the Federal Home Owners Loan Act of 1933 quickly indicates how the instant act is entirely deficient and lacking in the safeguards of constitutional requirements, such as "due process."

Pennsylvania Public Service Company Law of 1913 (1913 Laws of Pennsylvania, p. 1375) would be unconstitutional if the interpretation of the state supreme court were followed, as it would then not provide adequate safeguards of the requirements of due process and would be an improper delegation of legislative functions, it was held by the case of:

Ohio Valley Water Co. v. Ben Avon, 253 U. S. 287 (1920),

even though the Act defines in great detail the scope of the definition of "Public Service Company" (p. 1375-

77 of Act), specifies their duties and liabilities (p. 1377) and the Act, within itself, provides that any company

> "aggrieved by any ruling, regulation, classification, or order which it is or has been required by the Commission to observe or to carry into effect . . . shall be entitled to a full and fair hearing and a speedy determination of its complaint on the merits. . . ." (p. 1387.)

The Act further creates the commission, provides who may sue or be sued (p. 1396), appoints counsel, provides for enforcement of commission orders through the courts (p. 1398), for hearings regarding complaints as to service, for rates, fares, tolls or charges (p. 1403) for holding public rate hearings upon "due notice" and with findings of fact required (p. 1415), allows a complaint to be filed with commission (p. 1416), covers the subpoenaing of witnesses, administration of oaths and taking of testimony. (Sec. 24, p. 1418.)

The Act further within itself provides completely for the "Practice and Procedure before the Commission and Upon Appeal" (Articles VI, p. 1420) and specially provides for appeal to "Court of Common Pleas of Dauphin County" (p. 1425) and to the supreme court (p. 1428), including provisions for injunctions. (Sec. 31, p. 1429.)

Yet, in spite of all these safeguards, because the state supreme court interpreted the Act as restricting the procedure for injunctions to that contained in the Act itself, the United States Supreme Court held the Act would be unconstitutional as a deprivation of due process, if so construed, and reversed the state supreme court's decision.

The lack of *any* safeguards of due process in the Federal Home Owners Loan Act of 1933 makes a comparison here almost ridiculous.

The Motor Vehicle Act of California Statutes 1919, p. 193 Deerings General Laws No. 5127, Sec. 22 (a) provided:

> "that the maximum rate of speed over any bridge . . . may be established by the state highway commission at less than the rate established by law, when in the judgment of said commission the safety of persons using the highway . . . shall be promoted thereby. . . ."

The constitutionality of the Act was attacked in:

In re McLain, 190 Cal. 376,

where the accused had been convicted of driving 28 miles per hour on the Colorado Street Bridge after the highway commission had set a maximum speed of 15 miles per hour.

Held: The section is unconstitutional and at (p. 381) the court stated:

> "Viewed as an attempt to legislate concerning the rate of speed for vehicles over the bridge as part of the highway, the declaration of the commission was without authority and void."

i. e. the delegation of power being illegal, the commission's action was void.

As in the instant Federal Home Owners Loan Act of 1933, there were almost no limitations upon the unfettered authority of the Commission to legislate speed limits.

California Vehicle Code, Sec. 147 on registration of out of state cars was held to be unconstitutional in the case of:

Asher v. Ingels, 13 F. Supp. 654 (D. C. Cal. 1936) (a three judge court).

The Act provided that the Motor Vehicle Department:

"in its discretion may grant a temporary permit to operate a vehicle for which application for registration has been made. . . ."

The three judge court held (p. 659) the section to be unconstitutional as permits were not granted as a matter of right.

"It may or may not be granted arbitrarily by the department of motor vehicles."

This is just another example similar to the instant act, where no restrictions, or guarantees of due process, were contained in the act, and hence it likewise was held to be unconstitutional.

Section 5066 of the Code of Iowa which granted rule making authority to the Highway Commission was held unconstitutional in the case of:

Goodlove v. Logan, 251 N. W. 39, 43 (1933) (Ia.), even though in the Act itself, it was provided that its purpose was to grant authority to the state highway commission "for the protection of the highways and the safety of the traffic thereon." The commission was limited in its scope to only those matters not otherwise covered by statute.

This unfettered delegation of legislative powers constitutes another example, like the instant case, of a too broad delegation of authority.

The State Aviation Act of New Jersey (Pamp. L. 1931, Ch. 190, p. 475) was held to be unconstitutional as being an unwarranted delegation of the legislative functions in the case of:

State of New Jersey v. Larson, 160 N. J. App. 556, 10 N. J. Mis. 384 (1932),

and this, even though the Act there provided at length as to its purposes, definitions (p. 475) for the making of air traffic as well as field rules for establishing standards (p. 477) and set forth specifically the powers and duties of the director. (p. 477.)

The Act provided further for enforcement by the district attorney through the courts (p. 478), the procedure for issuance of subpoenas and similar requisites for hearing procedure. (p. 478-479.)

The supreme court of New Jersey decided their citizens were entitled to have the safeguards of due process completely and fully set forth in the Act itself, yet the instant act provides neither safeguards, guides, standards, nor any of the requirements of due process for the protection of people of the entire United States.

Illinois Community Currency Exchange Act. (Ill. Rev. Stat. 1943, Ch. 16½, Par. 31.)

This Act was held unconstitutional in part by the case of:

McDougal v. Lueder, 389 Ill. 141,

as the Act delegated discretion to the auditor of public accounts, even though the Act provided:

Par. 40, that applicants must be vouched for by two reputable citizens of the state, that the individuals are personally known to be trustworthy and reputable, which the auditor must find, that they must have had certain business experience, a good business standing and reputation and are worthy of a license.

Further the Act provided that no application may be denied unless the applicant has notice of hearing on his application and an opportunity to be heard. In case of denial, the auditor must send the applicant a copy of his findings within 20 days thereof.

A review of any denial was provided for, to be had before certain courts, and paragraph 45 permits of revocation of license only on hearing before the auditor on ten days written notice, specifying grounds for the contemplated action, with the further requirement that the auditor must find one of authorized causes for revocation. There is also contained therein the further requisite for notice of revocation to licensee with findings and right of review before court.

The safeguards imposed in the Illinois Act, by comparison, make the rights of our Shareholder Members look naked in view of the many protections reserved to applicants and licensees in the Illinois Act as against none in the case before the court.

Yet, this Illinois Act was held unconstitutional on the ground that it gave too much authority to an administrative officer, without imposing sufficient safeguards.

The Liquor Control Act of Delaware, 91, 1943 was held unconstitutional in:

State v. Retowski (1934), 175 Atl. 325, 6 W. W. Harr 330,

even though the Act provided the commissioner might adopt and promulgate rules and regulations for the specific purposes therein set forth including:

> "An effective control of the business of manufacture, sale, dispensation, distribution and importation of 'Alcoholic Liquor', within and into the State of Delaware, including the time, place, and manner in which alcoholic liquors shall be sold and dispensed, non inconsistent with the provision of this Act."

The Act requires that the regulations made be published (Sec. 801, p. 103), further requires notice stating the cause for refusal of licenses (Sec. 21 p. 116), sets forth the grounds for such refusal of licenses (Sec. 22 p. 116 to 117), provides for an appeal to the courts (p. 117) enumerates the grounds for cancellation of licenses (Sec. 29, 120) and even covers enforcements by court order (Sec. 56 and 60, p. 142-143.)

Here again, even with all of the therein contained specific policies, standards, guides and criteria, since the Act did not within itself set forth the due process requirements of prior notice and hearing, it was declared unconstitutional as an unwarranted delegation of legislative authority.

By way of comparison and to an even greater degree, it is submitted that the Federal Home Owners Loan Act of 1933 fails to set forth any provisions for due process,

any standards or guides for the making of rules to govern the appointment of conservators and for the merging, consolidating and liquidating of associations *even though they be entirely solvent*, as is the situation before this court.

(f) Paragraph (d) of Section 5 of the Home Owners Loan Act of 1933, as Amended, Is an Incomplete and Void Attempt to Delegate Unfettered Legislative Authority and Is therefore Repugnant to the Constitution of the United States.

The plaintiff appellees here reiterate the contentions they made in the court below that this Act of Congress does not set up sufficient nor any guides, standards, policies, yardsticks, nor criteria sufficient to meet the constitutional requirements for the guidance of the so-called "Board", now consisting of the one man, the sovereign Fahey, defendant-appellant here.

In promulgating and enacting laws (without rules and regulations) in sub-division (d) of the Act "for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association and to require an equitable readjustment of the capital structure of the same; and to release any such association from said control and permit its further operation," for the sake of brevity, we will adopt the use of the word "standard" as being inclusive of the various expressions used by courts in setting the rule down through the past more than one hundred years, wherein they have used such similar terms as "acts," "policies," "yardsticks," "consolidation," "criteria" and similar terms.

The question then presents itself as to what "standard" has Congress set up in the Federal Home Owners Loan Act of 1933, as amended, to limit the field or scope of enactments which Congress attempted to authorize the defendant-appellant Fahey here to enact. How much of the sovereign power of legislative enactment did Congress intend to delegate to Fahey? Was it a plenary power to enact any legislation that he might see fit in his omnipotent discretion to enact for the "reorganization, consolidation, merger, or liquidation of such association" and the appointment of conservators or receivers therefor and to readjust their capital structure and to release and permit them to continue their operations only if he, in his omnipotent wisdom should so see fit?

Just what standards or policy, if any, should govern the defendant-appellant Fahey here in the exercise of this sovereign right of enactment of law for the government of the approximately fifteen hundred (1500) federal savings and loan associations throughout the nation and their hundreds of thousands of shareholder members and their hundreds of millions of dollars of assets?

Does the Constitution of the United States authorize Congress to completely, and without reservation delegate away their responsibility of legislative enactment entrusted to them through the ballot box by the people of the United States?

We submit that the Constitution first enunciated and since the founding of our nation, the decisions thereafter, have consistently reiterated that Congress does not have authority to delegate away the unbridled authority for the enactment of legislation.

The defendant-appellants Fahey and Ammann suggest (1st) that the mere use of the words "conservator" and "receiver" (A. B. 59) gives a sufficient standard for the guidance of the sovereign Fahey and the enactment of legislation by him.

We respectfully submit and without intent to be facetious that the discharge of all of the loyal employees of the association and the causing of runs which have produced a net loss in the sixteen thousand (16,000) shareholder members savings accounts of approximately ten millions of dollars ($10,000,000.00), amounting to approximately forty per cent thereof, and the entangling of the titles to the approximately eight thousand (8,000) homes in Southern California and the beclouding of the titles to the homes of approximately eight thousand (8,000) Southern California residents, to say nothing of increasing the overhead for the operation of the association by approximately four hundred and twenty-five dollars ($425.00) per day, is hardly compatible with the words "conservator" or "receiver."

"Wherefore by their fruits ye shall know them." (Matthew 7:20.)

We submit one of the strongest implied connotations of the word "conservator" or receiver," at least to the lay general public is insolvency, or at least threat of insolvency. It has been admitted throughout this litigation that at least at the time of the seizure of the Long Beach Federal Savings and Loan Association on May 20, 1946, by the defendant-appellant Ammann that the association was solvent, with no threat of insolvency, and in fact had an undivided surplus and profits of approximately one million three hundred thousand dollars ($1,300,000.00).

The plaintiffs, the appellees here are, of course, unable to advise this honorable court as to the condition of the surplus and undivided profits, if any, of the association as of this time.

It is to be noted that the enactments of Congress cited by the defendant-appellants, such as the Bank Conservation Act of March 9, 1933 (Ch. 1, 48 Stat. 2, 12 U. S. C.) did not attempt to delegate the power to enact legislation, but rather set up within the act itself appropriate provisions for the appointment of conservators, even providing within the Act itself the conservators duties, powers, expenses, limitation of salaries (Sec. 203) and provides specifically for the termination of such conservatorship (Sec. 205) and for the reorganization of banks (Sec. 207), specifically setting forth therein provisions that such reorganization shall satisfy the Comptroller of the Currency as to its being fair and equitable to all depositors, their creditors and stockholders and provides in the procedure for such plans of reorganization, for reasonable notice, the percentage of depositors and creditors necessary to join in such reorganization plans and similar statutory procedural requirements and permits the "Comptroller of the Currency" only the authority to make rules and regulations necessary to carry out the specified provisions of the Act. The Bank Conservation Act of March, 1933, *supra*, contained guides standards and procedures in the law itself. No attempt therein was made to delegate legislative functions. Other acts mentioned by defendants-appellants counsel fall into the category of enactments by Congress of specific provisions with adequate standards provided within the acts themselves, such as the Bank Act of 1933 (Act of June 16,

1933, Chap. 89, Sec. 31, 48 Stats. 162, 194, 12 U. S. C. 71(a)) enacted by Congress itself, which specifically provides:

> "The Board of Directors, Board of Trustees, or other similar governing body of every national banking association and of every state bank or trust company, which is a member of the federal reserve system shall consist of not less than five, nor more than twenty-five members. If any national banking association violates the provisions of this section and continues such violation *after thirty days notice*, from the Comptroller of the Currency, the said Comptroller may appoint a receiver or conservator therefor in accordance with the provisions of existing law." (Emphasis added.)

This is a good example of a specific standard specifically set forth within the act itself by the enacting Congress for the guidance of the Comptroller of the Currency to aid him in administering the provisions of the Act of Congress.

Similarly the National Housing Act (Act of June 27, 1934, Chap. 847, Sec. 406, 48 Stats. 1246, 1259, 12 U. S. C. 1729), specifically provides within the enactment of Congress, Section 1729, Subdivision (b).

> "In the event that a federal savings and loan association *is in default*, the corporation shall be appointed as conservator or receiver and is authorized as such (1) to take over the assets of and operate said association, (2) to take such action as may be necessary to put it in a sound and solvent condition, (3) to merge it with another insured institution, (4) to organize a new federal savings and loan association to

take over its assets, or (5) to proceed to liquidate its assets in an orderly manner, whichever shall appear to the best interests of the insured members of the association in default." (Emphasis added.)

Again we say that in this Act, Congress specifically set forth the instance to-wit, "when the association is in default" as the standard to be first observed before further action could be taken: In the instant litigation, comparable action could not be taken until insolvency, irrespective of what may have since transpired under the management of the so-called conservator. The Long Beach Federal Savings and Loan Association was admittedly NOT IN DEFAULT.

The defendant-appellants next suggest that the doctrine of equity receivership will supply the standards for limitation of the delegation of the unbridled legislative functions which limitation Congress omitted to place in Section 5(d) of the Home Owners Loan Act of 1943, as amended. Defendant-appellants indicate the distinguishing factor which makes the equity receivership doctrine inapplicable to supply the constitutional deficiency of Section 5(d) of the Home Owners Loan Act of 1933, when they state at page A. B. 67:

"If Section 5(d) had merely authorized the bank administration (now consisting of one man, the defendant-appellant John H. Fahey) to apply to a court of competent jurisdiction for the appointment of a receiver or conservator, we have no doubt that neither appellees nor the District Court would have seen any constitutional objection. No claim of unlawful delegation of legislative power would have been made." (Interpolation in parentheses added.)

With this proposition, we are able to concur. If Section 5(d) had provided that Mr. Fahey, the defendant-appellant here, either individually or acting as the bank administrator should be required to proceed in an orderly manner to present the situation to a court of competent jurisdiction, there can be no doubt that the requirement of presentation to court would have met the constitutional requirements of due process, and since the court would have followed the law and applied the rules of equity before appointing a receiver and would not leave enacted a law, there would have thus existed no unlimited delegation of unfettered legislative authority.

Counsel suggested that

> ". . . it should not taint the statute with invalidity that in this instance Congress vested the authority in an administrative official rather than a court." (A. B. 68.)

The distinction which counsel either inadvertently or blindly declines to see is that Congress does not either here or otherwise vest the court with authority to enact legislation, whereas the provisions of Section 5(d) of the Home Owners Loan Act of 1933, as amended delegate and would "vest" the authority to enact legislation in the administrative official. The courts themselves, and especially this Court is and always has been most careful to refrain from judicial legislation. Even in the case cited by defendant-appellants, *Intermountain Rate Cases*, 234 U. S. 478 (1939), Mr. Chief Justice White in delivering the opinion of this court reiterated the principle again as follows:

> "In any event, however, we must be governed by the statute and its plain meaning."

Since it has been mentioned, it should be pointed out even in the *Intermountain Rates Cases, supra,* the court recognized the general rule that an unlimited delegation of legislative power, without standard fixed by Congress within the Act itself would be repugnant to the Constitution, but held the rule was inapplicable in that case which had to do with an amendment to an act to regulate commerce involving its long and short haul provisions whereby the Commission had to determine the dissimilarity of circumstances and then justify a deviation from the rate provisions of the long and short haul clause which power was by said amendment transferred from the carriers themselves to a public administrative body. Again this was a delegation by Congress to others of the duty to find a factual situation rather than a delegation by Congress of this power to enact legislation. If Section 5(d) of the H. O. L. Act had directed the defendant-appellant Fahey to present the matter to the appropriate court before seizing and at least partially destroying the association, we would have no quarrel with the constitutionality of the section, but, as expressed so aptly in the recently decided case of *U. S. v. United Mine Workers, et al.*, March 6, 1947, October Term, 1946, Nos. 759, 760, 781, 782, and 811, "No one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for."

State rules regarding the appointment of conservators are as suggested by the appellants, of interest. It is hard to conceive how they can supply the constitutional deficiencies of regulations and standards in Section 5(d) of the H. O. L. A. as it must be borne in mind that with 48 different states it is entirely conceivable that there might

well be 48 different standards, so called, some of which might be entirely satisfactory, while others might be as barren of constitutional safeguards as is Section 5(d) of the H. O. L. A. itself.

Furthermore the court's attention is respectfully directed to the fact that the State laws governing the appointment of receivers, conservators, liquidators of State-regulated building and loan associations are *laws* which have been enacted by duly constituted state legislators presumably, at least, acting within their legislative province and performing their legislative functions for which they were duly elected by the sovereign people of their respective states.

State laws are not "State rules" as artfully suggested by counsel for the defendant-appellants at page A. B. 68.

Since such state *laws* usually and customarily do "provide an extensive and detailed system of guidance and control for the state administrators, it follows that such extensive and detailed system of guidance would in itself constitute proper standards contained in such state laws for the guidance of officials in the determining of facts and in the making of administrative procedural detailed rules. This is the basis upon which most of such state laws governing the appointment of such conservator, receiver, liquidator, for such state regulated building and loan associations have been held constitutional.

The theory that Congress specifically or by implication incorporated such state laws by reference into the provisions of Section 5(d) of H. O. L. A., is untenable, for, were that to have been the intention of Congress, we would, in each instance, be met with the question, which of the 48 state laws were so incorporated by ref-

erence to Section 5(d) of the H.O.L.A.? Or would it be contended that all 48 state laws were so incorporated by reference?

If it is contended that the state laws of each individual state are incorporated by reference or by implication, then, it would follow that there would be a different set of laws determining when a conservator was to be appointed or an association was to be merged, or dissolved, or liquidated in each of the 48 different states.

And furthermore what would be the procedure in such states as might have no state laws upon the subject of merger, liquidation or consolidation or the appointment of conservators? In such states would the defendant-appellants, the sovereign Fahey, have the right to enact his own unlimited, unfettered laws according to his own caprice or whims without any standards being imposed upon him by the congressional enactment of Section 5(d), H.O.L.A., as to when to appoint a conservator, receiver, or upon what grounds, or to dissolve, or to liquidate, or to merge, or reorganize a federal savings and loan association.

In Section 5(d) of the H.O.L.A. to be deemed constitutional in those states which have substantive laws providing adequately to meet the constitutional requirements and to be deemed unconstitutional in those states which have no, or only inadequate, enactments on the subject of conservators, receivers and merger, etc. The mere statement of such propositions is sufficient to show that the incorporation of the state laws could not have been the Congressional intent. The fiats enacted by the defendant-appellant, Fahey, disclose no serious attempt on his part to issue edicts in conformance with the local state

laws on any subject regulating building and loan and savings and loan associations.

The California Building and Loan Association Act, #986 of Deering's General Laws of the State of California (of which the defendant-appellants cite only Section 13.11) specifically provides in the next Section, 13.12, for an application to the Superior Court of the state by the aggrieved association within 30 days after any seizure, and that upon such application, the Superior Court "after citing the commissioner to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties, and determining the fact, may upon the merits dismiss such application *or enjoin* the commissioner from further proceedings and direct him to surrender such business, properties, and assets to such association. An appeal from such judgment enjoining the commissioner from further proceedings and directing him to surrender such business, property, and assets to such association shall *not* operate as a stay thereof, unless the trial court in its discretion shall so order . . ." [See Appellees' Appendix D.]

It is further interesting to note that under the California statutes, enactments of the California legislature, not so-called rules or regulation, the California legislature has specifically set forth in detail the basis upon which the commissioner is authorized to take possession of such association and they have required as a prerequisite to any such taking of possession that the commissioner make a specific finding. By the inclusion in the Building and Loan Association Act of the State of California, *supra*, of a complete plan and procedure for the regulation and operation of state building and loan association and the

taking possession of the assets of such association after a finding of the existence of grounds specified by the legislature, the California legislature performed its legislative function and did not unlimitedly delegate an unfettered legislative power to enact loss by fiat and edict as was done by Section 5(d) of the H.O.L.A.

A further reason for the constitutional prohibition against permitting the legislature to delegate its legislative function is that the standards by which the administrator should be governed in the making of rules of procedure should be specifically set forth in the enactment itself, in order that the people to be governed as well as the administrator governing them may know what are the standards and limitations as to his rule making authority.

The defendant-appellants next argue that the standards for administrative action "need not be tested in isolation." They derive much meaningful content from the purpose of the Act, its factual background, and the statutory context in which they appear quoted from *American Power and Light Company v. Securities & Exchange Commission*, this term, 4 and 5 cited November 25, 1946, slip opinion, page 10. In this quotation the defendant-appellants start too late and stop too soon, for in order to obtain the full true meaning of the court's opinion it is necessary to consider at the same time preceding and succeeding passages thereof. The complete context on the subject is as follows (91 L. Ed. Adv. Op. 89, at 98):

> "These contentions are without merit. Even standing alone, standards in terms of unduly complicated corporate structures and inequitable distributions of voting power cannot be said to be utterly without

meaning, especially to those familiar with corporate realities. But these standards need not be tested in isolation. They derive much meaningful content from the purpose of the Act, its factual background and the statutory context in which they appear. See Intermountain Rate Cases (United States v. Atchison, T. & S. F. R. Co.), 234 U. S. 476, 58 L. ed. 1408, 34 S. Ct. 986. From these sources—from the manifold evils revealed by the legislative investigations, the express recital of evils in §1 (b) of the Act, the general policy declarations of Congress in §1 (c), the standards for new security issues set forth in §7, 15 U. S. C. A. §79g, 4 F. C. A., Title 15, §79g, the conditions for acquisitions of properties and securities prescribed in §10, 15 U. S. C. A. §79j, 4 F. C. A., Title 15, §79j, and the nature of the inquiries contemplated by §11 (a)—a veritable code of rules reveals itself for the Commission to follow in giving effect to the standards of §11 (b) (2). These standards are certainly no less definite in nature than those speaking in other contexts in terms of 'public interest,' 'just and reasonable rates,' 'unfair methods of competition' or 'relevant factors.' The approval which this Court has given in the past to those standards thus compels the sanctioning of the ones in issue. See New York Cent. Securities Corp. v. United States, 287 U. S. 12, 24, 25, 77 L. ed. 138, 145, 146, 53 S. Ct. 45; Yakus v. United States, 321 U. S. 414, 419-427, 88 L. ed. 834, 845-848, 64 S. Ct. 660, and cases cited."

It will be seen from the foregoing comparative table herein (*supra* pp. 73 to 83) which compares the Public Utility Holding Company Act and the Act now under attack that congress provided extensive and comprehen-

sive statements of legislative policies, standards and provisions for due process the Utility Act, but the Home Owners Loan Act of 1933 is barren of any such. In the Public Utility Holding Company Act these various provisions furnish standards in the express language of the statute to guide administrative actions.

The reasoning in the foregoing case is clearly applicable to the instant act which is unconstitutional as a delegation of legislative power to defendant-appellant Fahey, because of an absence of ascertainable standards for guidance in carrying out its functions.

The thorough searching by, defendant-appellants of the Home Owners Loan Act for any ascertainable standards to meet the constitutional requirements of a specification of legislative policy and standards and to provide the safeguards of due process has led them to suggest numerous provisions which are totally inapplicable for use as standards for the guidance of the administrator in enacting rules and regulations for reorganization, consolidation, merger, or liquidation, or appointment of conservator or receivor for such association.

Does this Court feel that methods by which an association may raise its capital, or by which it shall lend its funds, or provisions for that membership in a federal home loan bank or provisions for issuance of subscriptions to preferred shareholders, or that provisions for exemption from taxation or provisions to act as a fiscal agent of the United States have anything to do with the reorganization, consolidation, merger or liquidation of federal savings and loan association? Or with the powers to appoint a conservator or receivor thereof, or to require equitable readjustment of the capital structure of the

same? Or with the provisions concerning the release of such association from control and permission for its further operation? The criteria, standards and guides of Section 5(a) are different in conception from the legislative enactments permitted to be made under Section 5(d).

The Court's attention is directed to the fact that subsection (d) of Section 5 is a section which has to do with the "reorganization, consolidation, merger or liquidation of such association, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same;" thus this section has to do with the change, alteration, merger, consolidation or termination of such associations, whereas in subsection (a) of Section 5 are included provisions having to do with rules which concern the "organization, incorporation, examination, operation and regulation of associations" provisions which deal with bringing such organizations into being, and their maintenance. Thus we find a distinct cleavage between the purposes of these two subsections. Both contain words delegating to the board, the power of legislative enactment.

Any words of limitation, criteria, policy, which might be deemed to set forth statutory standards or declarations of policy found in sub-division (a) are by their very nature directed to the delegation of legislative authority found in sub-section (a) to wit; for the purpose of creation and maintenance of the association and are inapplicable to subdivision 5(d) wherein are found provisions dealing with termination of the life of such associations and not the origin or continuity thereof.

The omission from sub-division 5(a) of any mention of a power to make rules and regulations for "the reorganization, consolidation, merger or liquidation of such association, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation" is a clear indication of the legislative intent of Congress that enactment of rules and regulations for such purposes was not within the purview of sub-division 5(a) under the well known rule of *"expressio unius est exclusio alterius."*

Had it been the intention of Congress that the language of sub-division 5(a) should be applicable to sub-division 5(d) there would have been no necessity for making a separate sub-division 5(d), but rather the listing of the items of sub-division 5(d) reorganization, consolidation, merger or liquidation, etc., could have more easily been included within sub-division 5(a).

Section 5(d) being a delegation of authority to enact "rules and regulations" for the deprivation of property, title, possession and other incidents of ownership in order to meet constitutional standards is required to have:

1. Adequate safeguards, criteria, limitations or statutory standards or a declaration of policy;

2. And also must have adequate provisions to meet the constitutional requirements of due process.

It is submitted that this enactment, to wit, sub-division 5(d) is totally lacking in both these vital requirements.

Had Congress seen fit to include within Section 5(d) or in any other appropriate manner in the H. O. L. A. criteria to serve as a standard for the enactment of legislation by the *administrator* for the appointment of conservators, receivers or for the dissolution, liquidation, merger, reorganization, consolidation, etc. of Federal associations, it is submitted that this association in the instant action would have satisfactorily passed such test so as to make the appointment of a conservator unjustifiable.

The best practice in the State of California would be for the defendant-appellant Fahey to have proceeded by appropriate court action, rather than by direct seizure without notice, hearing findings or any other due process.

The character and responsibility of the management is evidenced by their accomplishments in the past twelve (12) years in having developed this association from its humble beginning of $7,500 of deposits to a twenty-six million dollar ($26,000,000.00) solvent institution when seized, and its usefulness and success in the community is manifest in the confidence of its sixteen thousand (16,000) shareholder members and the safety of the institution from the investors' view point is best proved by its financial statement at the time of the seizure showing not only no impairment of capital, but actually an admitted surplus and undivided profits of approximately one million three hundred thousand dollars ($1,300,000.00). The consistency of the association's very same management in having continuously paid dividends of from two and a half to four per cent for the past twelve (12) years, and the soundness of its home financing policy has resulted in

its having diversified its loans among some eight thousand (8,000) satisfied borrowers.

Defendant-appellants next suggest that the constitutional requirements that the act provide a "standard" to safeguard delegation of legislative authority can be supplied by reference to a vague, nebulous conglommeration of *quasi* facts which they designate as the background of the act. As to matters of interpretation and to aid the courts in garnering the proper connotation of particular words and expressions, it has, of course, long been the practice to seek aid from Congressional statements made during the enactments of legislation where the language within the act itself is obscure.

The term "standard" is herein used for the sake of brevity to include all of the expressions such as "criteria", "yardsticks", "legislative policy", "canalizing", "framework", and "guides".

The absence of constitutional requirements of a statement of legislative policy and standards, and the safeguards of due process, cannot be added to the statute by defendant appellants' adroit attempt to incorporate into the statute itself, by implication and innuendo, matters not in the act and not even in the record.

Such rules of interpretation cannot add missing language to a statute barren of these constitutionally required safeguards. Even emergency legislation required by extraordinary conditions does not justify violation of the fundamental constitutional requirements as was readily admitted by Mr., the then Solicitor-General, Reed in his argument to this court in 1935 in the case of *U. S. v. Butler, et al.*, 297 U. S. at 4, wherein he quoted from the

opinion of this court in the case of *Home Building & Loan Assn. v. Blaisdell*, 290 U. S. 398 (1932):

> "... extraordinary conditions may call for extraordinary remedies; but, as the Court has said, 'the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power'."

That this court will not ignore the plain meaning of a statute in order to avoid a decision upon its constitutionality and validity has already been enunciated by this court in passing upon and declaring unconstitutional Section 5(i) of this same act, the Federal Home Owners Loan Act of 1933 as amended, in the case of *Hopkins Savings Association v. Cleary*, 296 U. S. 800 (1935), at p. 315, wherein the court stated:

> "'But avoidance of a difficulty will not be pressed to the point of disingenious evasion.' Moore Ice Cream Co. v. Rose, supra (289 U. S. 373): 'Here the intention of the Congress is revealed too distantly to permit us to ignore it because of mere misgivings as to power' Ibid. The problem must be faced and answered." (Citation inserted.)

and further, at page 338, Mr. Justice Cardozo states:

> "The power of Congress in the premise, if there is any, being not exclusive, but at most concurrent, and the untrammeled coexistence of federal and state associations being a conceded possibility, we are constrained to the holding that there has been an illegitimate encroachment by the government of the nation upon a domain of activity set apart by the Congress as the province of the states. Cf. Linder v. U. S., 268

U. S. 5, 17; U. S. v. Dewitt, 9 Wall 41, 45. The destruction of associations established by a state is not an exercise of power reasonably necessary for the maintenance by the central government of other associations created by itself in furtherance of kindred ends."

The differentiation between the delegation of legislative function and the delegation by a legislative body to an administrative official of the duty of administering an enactment is succinctly expressed in the case cited by defendant-appellants, of *People ex rel Barrett v. Logan County Building & Loan Assn.*, 369 Ill. 518, at 526, as follows:

> "The basic distinction is between a delegation of power to make the law, which involves the discretion as to what the law should be, and conferring the authority or discretion as to its execution, to be exercised under and conformable to the law. The first cannot be done; the latter is unobjectionable. I Lewis' Sutherland on Stat. Const. (2d ed.) sec. 88; City of Chicago v. Alpert, Inc. supra.)"

In holding that certain sections of the New Jersey Building and Loan Association Act which, in detail and at considerable length, "prescribed the method and order to be applied by building and loan associations for the payment of maturities and withdrawals, . . ." were constitutional, the Supreme Court of the State of New Jersey in the case of *Veix v. Seneca Building and Loan Assn.*, 126 N. J. L. 314 (1941), again reiterated the general rule at 321:

> "The legislature may neither abdicate, nor transfer, nor assign nor delegate to others its exclusive function to make the law. But the legislature may

> select or delegate to, some governmental instrumentality or agency or public official, the power, or function, to make findings and fact or to make subordinate rules, or orders, or both, *within the defined standards and policies prescribed by it.* (Citing many cases.)" (Emphasis added.)

Furthermore, this Court, in reversing the Supreme Court of Louisiana and holding that certain provisions of a Louisiana Building and Loan Association Act, Number 140, are unconstitutional as being repugnant to the Constitution of the United States in the case of *Treigle v. Acme Homestead Association*, 297 U. S. 189 (1936), states at 197:

> "The legislature has no greater power to interfere with the private contracts of such corporations, or the vested rights of their stockholders as such, under the pretext of public necessity, than it would have to attempt the same ends in the case of a private corporation. Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive."

It should be borne in mind that there was no so-called governmental money of any kind in the admittedly solvent Long Beach Federal Savings and Loan Association, when it was seized on May 20, 1946 by the defendant appellant Ammann, the minion of the defendant-appellant sovereign Fahey, without any prior request for correc-

tion of even imaginary improprieties, without any notice, without hearing or opportunity to be heard, although its 16,000 shareholder members were thus deprived of their right of possession, control and management of their own twenty-six millions of dollars in assets. This twenty-six millions of dollars, including the approximately $1,300,000.00 of surplus and undivided profits [R. 221], represented the savings of approximately 16,000 shareholder members of the Association who were its sole mutual owners.

Neither the defendant-appellant sovereign Fahey nor his nominee, the defendant-appellant Amihann, owned nor had any right, title or interest in and/or to any of the assets of this Association.

The entirely solvent Federal Home Loan Bank of Los Angeles and its approximately forty-three millions of dollars in assets, including nearly $2,000,000.00 of surplus and undivided profits, having likewise been seized without warning, notice, hearing or opportunity to be heard, less than sixty days before, and all of its assets without the consent of any of its stockholders and this institution having been instantaneously and summarily without warning, notice or hearing, dissolved, liquidated, merged and consolidated with the Portland Bank, so that their funds and assets were commingled and then moved to the San Francisco Bank over 400 miles away, and the name of the consolidated institution having been changed to the Federal Home Loan Bank of San Francisco by fiat [R. 26, 291] of the defendant appellant sovereign Fahey, all within one day, there were grounds for the reasonable fear on the part of 16,000 shareholder members and their duly elected officers of the Long Beach Association that they would

be accorded similar treatment and likewise be destroyed forthwith.

This, no doubt, would have occurred, but for the prompt intervention by the United States district court which by the immediate issuance of its restraining order prevented such action.

It can hardly be denied that a seizure followed by consolidation, merger or liquidation or other transferring and commingling of the assets of the association with the funds of some unknown association located in some foreign city or even states under the direction of a totally new, strange or different management which may institute strange and unusual rules and regulations governing all of the various detailed phases of the operation of the building and loan association, certainly would constitute a deprivation of some of the incidents of ownership of property.

A merger of this entirely solvent association, with an insolvent association might well not only consume the substantial one million three hundred thousand dollars ($1,300,000.00) surplus and undivided profits this association had when seized, but might even result in the combined commingled associations being themselves insolvent.

Fantastic though this suggestion may seem, it is not outside the realm of probability, when viewed against the background of what had already been so recently accomplished by this same defendant-appellant, the sovereign Fahey, in the seizure, dissolution, merger and scrambling of the Los Angeles and Portland Banks into the so-called San Francisco Bank.

It can hardly be said that the seizure of this solvent association which resulted in a net reduction in the shareholder members savings investments of approximately forty percent, or nearly ten millions of dollars ($10,000,000.00), and which beclouded and entangled the titles to some approximately eight thousand (8,000) parcels of southern California real property, was conducive to the purpose of providing "for the financing of homes" so greatly needed by veterans and other citizens of southern California at that time.

In the circuit court's opinion in *Butler v. United States*, 78 F. (2d) 1, which the Supreme Court affirmed in *Butler v. United States*, 279 U. S. 1 (1938), in declaring Sections 608 and 609 of the Agricultural Adjustment Act unconstitutional, because of the attempted improper delegation of an unfettered legislative power to the Secretary of Agriculture without a sufficient protective statement of policy and standards the court commenting upon what should be contained in such standards, stated:

> "The Powers to determine what the law shall be, what property shall be affected by taxation or regulation and what standards shall govern the administrative officers in administering acts of Congress has never been held to be an administrative function. The Power to impose a tax and to determine what property shall bear the tax can only be determined by the legislative department of the government. *If Congress undertakes to lay down a guide for administrative officers to enforce in carrying out its mandate, it must be an intelligible and a reasonable definite standard.*" (Emphasis added.)

As suggested by this court in the case of *Schechter Corporation v. United States*, 295 U. S. 495 (1934) at page 530,

> "Accordingly, we look to the Statute to see whether Congress has overstepped these limitations,—whether Congress in authorizing 'codes of fair competition' has itself established the standards of legal obligation, thus performing its essential legislative function, or, by the failure to enact such standards, has attempted to transfer that function to others."

What standard within the Act limits the unfettered legislative power reposed in the defendant-appellant sovereign Fahey to issue fiats and edicts for the termination of solvent, successful, well managed federal savings and loan associations?

Competitive financial lending agencies might welcome the suggestion implied in defendant-appellants brief at page 80, that the standards for establishment, insufficient though they may be, to the effect that associations can only be esablished if this could be done "without undue injury to properly conducted existing local thrift and home financing institutions" should be applied to the termination of such associations by way of merger, consolidation, liquidation dissolution or otherwise. Were such an interpretation to be adopted, if competition became keen and the competitor had political influence, such competition might be effectively stopped by prevailing upon the omnipotent sovereign Fahey to issue his edict and fiat to dissolve, liquidate or otherwise terminate the existence of such successful competition.

To permit such rule by edict and fiat would not be consistent with the fundamental American concept that ours is

"A Government of laws, and not of men."

The attack here is for the purpose of disclosing the unconstitutionality of Section 5(d) of the Home Owners Loan Act of 1933, as amended. The appellees concede this constitutes an attack upon an "Act of Congress" upon the ground that "such act or any part thereof is repugnant to the Constitution of the United States", as said act does not set up sufficient standards, guides, policies nor any yardstick for the guidance of the so-called "board" (Consisting of one man, the sovereign John H. Fahey) in promulgating rules and regulations "for the reorganization, consideration, merger or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of the association. . . ." (Sec. 5(d) H. O. L. A.)

What standards are to guide the commissioner in enacting his edicts for the appointment of conservators, and for the determination of which associations shall be "merged" with which other associations?

Is it a question of solvency, insolvency, good management, or bad mangement?

Should well managed associations be merged with poorly managed associations?

Should insolvent associations be merged with solvent associations?

Is it a matter of locality—are associations of adjacent territories to be merged?

Is it a matter of the economic conditions of the locale where such associations are located?

Is it a question of economic need for such associations that justify their merger with each other?

Is it a question of merging associations from areas where they are not economically needed?

Is it a question of dissolving associations to stifle competition?

Is it a question of merging associations to create affective monopolies?

Is it a question of political expediency, associations having officers of one political faith to be merged with associations having officers of the same political faith, or, on the contrary, having officers of a different political faith?

Is the determination as to what associations are to be merged to be determined by the religious beliefs of the shareholder depositor members?

Is it a question of the personalities of the officers of such associations?

Does the Act of Congress, as appears to be the case here, leave it entirely up to the Federal Home Loan Bank Board—now controlled, operated and directed by one man only, the defendant-appellant, the sovereign John H. Fahey—to follow his whims unrestrainedly and unfettered by any expressed congressional policy as to which associations shall be reorganized, dissolved or liquidated and which associations shall be merged or consolidated with which other associations, if any?

What is the reason? Possibly the determining fact might be, as expressed by the court below,

". . . because the wind today is blowing from the north." [R. 699.]

II.

Enactments Which Permit the Taking, Seizing or Deprivation of Property Without Due Process of Law Are Repugnant to the Constitution of the United States and the Government.

(a) The 4th and 5th Amendments of the Constitution of the United States Prohibited the Enactment of Legislation Which Permits the Seizure, Taking or Deprivation of Property Without Due Process of Law.

"Amendment IV. Section 1. *The right of the people to be secure* in their persons, houses, papers and effects, *against unreasonable* searches and seizures, shall not be violated, and no warrants shall issue but upon reasonable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." (Emphasis added.)

"Amendment V. Section 1. *No person shall be* held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal cases to be a witness against himself; nor be *deprived* of life, liberty, or *property, without due process of law*; nor shall private property be taken for public use without just compensation." (Emphasis added.)

(b) A Conservator's Seizure of the Assets of an Association and Dispossession of Its Duly Elected Directors and Officers From the Management and Control of Its Property, Constitutes a Deprivation of That Property From the True Owners, the Shareholder Members.

A mere reading of Section 5(d) of the Home Owners Loan Act of 1933, as amended, discloses that it is entirely barren of any provision or requirement that the laws which the board, now consisting of the one man, the defendant-appellant Fahey is authorized to enact shall provide any safeguards or protectives for due process, and therefore by such omission of the required constitutional guarantees of due process, permits the enactment of laws by the so-called board for the seizure from the rightful owners, and thereby depriving them of property without due process of law.

The taking, seizing, transferring, consolidating and merging of the assets consisting of all of the property of various kinds and of various federal financial institutions and transporting the ownership of such property to other locations, even out of a state and back into a state again and scrambling such assets and property, changing them from one form of property into another, delivering the direction, control and management of such property to new and different persons, directors and officers not selected by or elected by the owners of the property as was done by the defendant-appellant Fahey and his minions in the prior seizure of the entirely solvent Los Angeles bank and its assets and commingling them with the Portland, Oregon Bank and its assets into the so-called San Francisco, California Bank under the management and control of totally different directors and officers not selected by nor elected by the owners of the property, part of whom

were the sixteen thousand (16,000) shareholder members represented by the plaintiff-appellees herein, clearly indicates that the defendant-appellant Fahey, himself, at least deemed that Congress had delegated such omnipotent authority to him.

It can hardly be questioned that this was a violation of the right of the people to be secure against unreasonable seizure and constitutes a deprivation of property without due process of law. Had not the District Court of the State of California in and for the Southern District, acted promptly and issued its restraining order upon the request of the plaintiff-appellees, the Long Beach Federal Savings and Loan Association, in all probability would have suffered the same fate as that accorded the Los Angeles Bank by the sovereign, dictator, the defendant-appellant Fahey.

No part of the approximately one million three hundred thousand dollars ($1,300,000.00) of surplus and undivided profits admittedly existing at the time of seizure has ever been returned to the approximately sixteen thousand (16,000) shareholder members of the association, and those whom the defendant-appellant A. V. Ammann acting as the so-called conservator had succeeded in frightening into withdrawal of their savings from the association have not received any part or portion of the undivided surplus and profits which belong to them. While this may be comparatively a small sum, nevertheless to those residents of southern California who have withdrawn forty per cent (40%) or nearly ten millions of dollars ($10,000,000) of their savings investments from the association. This forty (40%) per cent of the surplus and undivided profits of approximately five hundred twenty thousand dollars ($520,000.00) constitutes a sizeable

deprivation of their property without due process of any process of law.

As expressed by Mr. Justice Cardozo in his concurring opinion in the case of *Schechter Corporation v. United States, supra,*

> "The Statute however, aims at nothing less, *as one can learn* both from its terms and from the administrative practice under it." (Emphasis added.)

or as indicatively expressed by the colloquialism "The proof of the pudding is in the eating."

In 1934, when the Long Beach Federal Savings and Loan Association was organized, the rules and regulations which had been adopted by the five man non-political board provided that the board before making of findings that the interests of creditors or shareholders were being jeopardized, or that the business was in an unsafe condition or if the association had suspended payment of its obligations and under various other conditions, the five man non-political board might take certain actions, including it might appoint a conservator, and as to that subject the board's rules and regulations then specifically provided that

> "It will not be the policy of the board except in extraordinary circumstances to exercise such power without giving the institution an opportunity to be heard." [R. 281, Section 45 Rules and Regulations for Federal Savings and Loan Associations, enacted June 13, 1933.]

Likewise in such rules and regulations, the five man non-political board created by Congress had adopted, effective in October, 1934, provisions for an automatic hearing upon a ten days notice "mailed to *all shareholders*,

borrowers and creditors of the association" providing them an opportunity to be heard in regard to any seizure by any conservator. [R. 282—Section 46 Rules and Regulations Federal Savings and Loan Associations.]

A little bit later the board still composed of five (5) members took the next step and on December 1, 1936, adopted Revised Rules and Regulations, which, among other things, deleted the statement of policy of the board in regard to giving institutions an opportunity to be heard before exercising of powers if they had any, to seize such an association, as set forth in Section 45, *supra*, and in lieu thereof provided that

> "*Before the appointment of a conservator or a receiver, the federal association will be given an opportunity to be heard*; provided, however, that the Board may appoint a temporary conservator pending such hearing." (Emphasis added.) [Section 5](c) Revised Rules and Regulations of Federal Savings and Loan Associations, effective December 1, 1936, R. 282.]

Similar provisions for the giving of notice to shareholders, borrowers and creditors and affording them an opportunity to be heard regarding such seizure were reenacted in the Revised Rules and Regulations to the five man non-political board, adopted December 1, 1936. [Section 52 thereof, R. 282.]

Later the Federal Home Loan Bank Board, then still consisting of five non-political members was consolidated with the National Housing Association by Executive Order No. 9070 effective February 24, 1942 [R. 282] and from this consolidation, the defendant-appellant Fahey emerged as the commissioner and the sole and only re-

maining member of the so-called Home Loan Bank Board, and ever since he, as conservator has assumed the sovereign powers and policies of the so-called board.

The next step was the adoption on August 15, 1943, by the Board, now composed only of the defendant-appellant Fahey, of a revised set of rules and regulations of federal savings and loan associations, which provided among other things that whenever in the opinion of the one man board, any association was guilty of any of the offenses listed as legal conclusions, the board, to wit, the sovereign, dictator Fahey was empowered by fiat to appoint a conservator or receiver and to order the reorganization, consolidation, merger or liquidation of such association forthwith, without prior notice, hearing, opportunity to be heard, and without any requirement for the taking of testimony, the hearing of witnesses or the presentation of proof of any kind as to the commission or non-commission of the legally concluded offenses charged. [R. 282, No. 206.1 Rules and Regulations for Federal Savings and Loan Associations, adopted January 25, 1943, 8 Fed. Reg. 1180.]

The first few words used in the commencement of Section 206.1 of such regulation indicated what powers and authority the defendant-appellant Fahey considered himself to possess. They read

> "Whenever in the *opinion* of the Federal Home Loan Bank Administration any Federal Savings and Loan Association;"

and thereafter follows a list of some ten legal conclusions.

> ". . . the Federal Home Loan Bank Administration may appoint a *conservator* for such federal association. . . . etc." (Section 206.1, *supra*.)

There is not even the customary requirement of a finding, the sovereign Fahey, according to his own rules and regulations, does not even have to be reasonably satisfied that any of the so-called offenses have been committed before he orders the seizure of such association and its assets, and destroys it.

By such edicts of seizure and appointment of conservators, the defendant-appellant Fahey provides by the regulations enacted by him (Section 207.3) for the summary removal, without notice or hearing of the directors and officers of such accused association and provides that

> "... such officers and directors, or any of them shall not thereafter have, exercise, or act in connection with, any such rights, powers or privileges, or any asset or property of any nature of the association; provided, however, that nothing herein shall deny to such officers and directors the right from time to time to address such petitions, authorized by the board of directors, as they may have to the Federal Home Loan Bank Administration, or its representatives designated to receive such petition concerning such association, or to represent the association in hearings provided for in these rules and regulations." (Sec. 207.3, Rules and Regulations for Federal Savings and Loan Associations, 8 Federal Rules and Regulations 1180.)

The defendant-appellant Fahey did permit such associations, their directors and officers to retain the one constitutionally guaranteed right of petition. Otherwise such rules and regulations themselves did not even provide the ordinary safeguards of due process required by the constitution (Amendments IV and V).

It is to be noted that these revised rules and regulations adopted by the one man board Fahey did not provide nor did they establish any procedure for, nor allow, nor authorize, nor permit any appeal to the duly constituted courts of justice of the United States of America nor of any state thereof.

Such revised rules and regulations adopted January 25, 1943, 8 Fed. Reg. 1180 deleted and omitted therefrom the prior regulations of the five man non-political board and the requirement for an automatic hearing after ten days' notice "mailed to all shareholders, borrowers and creditors of the association. . . ." (Former regulations Section 46, *supra.*)

A careful reading of these revised rules and regulations adopted by the defendant-appellant Fahey January 25, 1943, 8 Fed. Register 1180) discloses that while a so-called administrative hearing is provided for under certain limited conditions whereby the defendant-appellant Fahey may be petitioned only by the dispossessed accused directors and officers through his minions to reconsider his own acts in having issued his edict for the appointment of a conservator and the seizure of such association and possibly even its liquidation, merger or dissolution (as was done in the Los Angeles bank matter, *supra*), these fiats are absolutely barren of any provision for independent notice to the shareholder members, the true mutual owners of such association or for their being permitted to be independently represented or independently heard at such prejudged administrative hearing.

The inconsistency of this is apparent from the mere statement. If the opinion of the defendant-appellant

Fahey were to have been reasonably and properly arrived at it would indicate that at least in his opinion the dispossessed directors and officers of such seized associations were dangerously unqualified to represent the shareholder members, the true mutual owners of such association, yet, by his same edict (Section 206.2, Revised Rules and Regulations, *supra*) the only representatives such shareholder members are specifically permitted to have at said so-called prejudged administrative hearing are the very same dispossessed directors and officers whom the defendant-appellant Fahey has deemed to be unfitted to represent them, as even such prejudged so-called administrative hearing is to be had only if "within fourteen days (Sundays and holidays included) after the appointment of a conservator or receiver for a federal association not at the time of such appointment in the hands of a conservator, such Federal association, which has not by its board of directors, consented to or requested the appointment of a conservator or receiver, *may* file an answer and serve a written demand for a hearing, *authorized by its board of directors*, which demand shall state the address to which notice of hearing shall be sent."

It is to be noted that demand for even such an improvident, prejudged, unjust hearing can only be made if "authorized by its board of directors" the very people who within the preceding fourteen (14) days (Sundays and holidays included) have been deemed, in the opinion of the one man board, to be unfitted, incapable or unworthy of continuing to manage the affairs of such association.

In the case of *Scott v. McNeal*, 154 U. S. 34 (1893), the Supreme Court in discussing the matter concerning a creation of a state court and the deprivation of property without due process of law, states:

> ". . . The 14th Article of Amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains, 'nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the state, whether through its legislative, its executive or its judicial authorities. *Ex parte Virginia* (*"Virginia v. Rives"*), 100 U. S. 313, 318, 319 (25:667, 669); *Ex parte Virginia*, 100 U. S. 339, 346 (25:676, 679); Neal v. Delaware, 103 U. S. 370, 597 (26:567, 574). And the first one, as said by *Chief Justice Waite in United States v. Cruikshank*, 92 U. S. 542, 554 (23:588, 592), repeating the words of *Mr. Justice Johnson in Bank of Columbia v. Okely*, 17 U. S. 4 Wheat. 233, 244 (4:559, 561), was intended *'to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.'* . . ." (Emphasis added.)

While the XIV Article of Amendment was there under consideration, the same fundamental principle applies to the interpretation of the IV and V Articles of Amendment which are restraintive of the powers of the Federal Government and are herein applicable.

In discussing judicial proceedings, and "due process of law" when applied to judicial or so-called judicial pro-

ceedings, Mr. Justice Field, in the case of *Pennoyer v. Neff*, 95 U. S. 714, 733, defines "due process of law" to

> "mean a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is by the law of its creation—to pass upon the subject matter of the suit and if that involves *merely* a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state or his personal appearance." (Emphasis added.)

Congress enacted no law authorizing the defendant-appellant the sovereign Fahey to create any courts for the trying of the validity of his, the dictator's own fiats issued by him for himself.

Neither Section 5(d) nor any other part of the Home Owners Loan Act authorizes the defendant-appellant Fahey to create so-called administrative tribunals for the purpose of ousting the regular duly constituted courts of the land of their jurisdiction.

Even if it were to be considered that the omitted safeguards of due process required by the Constitution were to be subsequently adopted, it is apparent that the ones here adopted by this dictator-sovereign did not provide the constitutionally required safeguards of due process, for

> "No one, no matter how exalted his public office or how righteous his private motive, no man can be judge in his own case. That is what courts are for." *U. S. v. Lewis, supra.*

This discloses a progression from democracy to dictatorship unparalleled in the annals of the history of our country, although not unknown to the modern history of foreign nations.

(c) Provisions Sufficient to Satisfy the Constitutional Requirements of Due Process Must Be Contained Within the Enactment Itself. The Congressional Act Within Itself Must Require Notice and Provide the Right to Hearing and to Be Heard and the Failure So to Do Permits the Making of Rules and Regulations, as Has Here Been Done, for the Seizing of Property Without Due Process of Law, and Thus the Federal Home Owners Loan Act of 1933 Is Unconstitutional as Being Repugnant to the Fourth and Fifth Amendments of the United States Constitution.

Ohio Valley Water Co. v. Ben Avon, 253 U. S. 287 (1920).

Pennsylvania Public Service Company Law of July 26, 1913 (laws of Pennsylvania—1913. p. 1375) was held invalid as the State Supreme Court,

> "interpreted the statute as withholding from the court's power to determine the question of confiscation according to their own independent judgment when the action of the commission comes to be considered on appeal" * * *

and as so interpreted that was considered to deny "due process" and thus to be unconstitutional although the Act there specifically within itself set up entire procedure for full hearing upon notice before the Commission and for the Judicial Review of the Commissioner's rules, regulation, finding, determination or order, by way of injunction. (Section 17, 22 and 31.)

Whereas, in the instant case no provision whatsoever is made within Section 5(d) nor any other part of the H.O.L.A. as enacted by Congress for any hearing, to say nothing of any judicial review, and it is worthy of note that the defendant Fahey as Commissioner and sole director is apparently of the opinion that the Federal Home Loan Act of 1933, the Act of Congress here under consideration, gives his authority to foreclose and prohibit any possibility of any judicial review by the officers and directors of the confiscated association, as he has by his Regulations, Section 207.3 of Title XXIV, Code of Federal Regulations, Part VI, adopted January 25, 1943, provided that:

Section 207.3 SUCCESSION.

"Immediately upon the posting of the notice on the door of such Federal Association as provided in paragraph (2) of Sec. 207.2 of these rules and regulations, the conservator shall succeed to all the rights, powers and privileges of the Federal association, its officers and directors, or any of them. *Such officers and directors or any of them shall not thereafter have, exercise, or act in connection with, any such rights, powers or privileges, or any asset or property of any nature of the association: Provided,* however, that nothing herein shall deny to *such officers and directors* the *right* from time to time *to address such petitions, authorized by the Board of Directors, as they may have to the* Federal Home Loan Bank *Administration or its representatives designated to receive such petitions* concerning such association, or to represent the association at hearings provided for in these rules and regulations."

(Emphasis added.)

Where, as here, the act does not provide for an adequate opportunity for a proper hearing, it apparently is incomplete and fatally defective as not protecting the requirements of "due process" and thus permits the making of rules, as here, which deny a fair and impartial hearing; thus the act is unconstitutional and is repugnant to the Fifth Amendment to the Constitution.

(d) The Notice Required, as an Element of Due Process, Is an Essential Part of the Statutory Provision and Not Only to Be Awarded as a Mere Matter of Favor or Grace.

Coe v. Armour Fertilizer Works, 237 U. S. 413 (1915).

Section 2677 of Florida General Statutes of 1906, as amended, which provided that judgments against corporations could be converted *ex parte* into judgments against stockholders, also here held to be unconstitutional as it permitted the taking of property without providing due process of law, the court therein stated:

> "Thus construed, and as applied in this case, we think Section 2677 is repugnant to the 'due process of law' provisions of the Fourteenth Amendment, which requires at least a hearing, or an opportunity to be heard, in order to warrant the taking of one's property to satisfy his alleged debt or obligation; and in our opinion the other sections do not adequately supply the defect.
>
> . . . . To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.

Rees v. Watertwon, 19 Wall. 107, 123, 22 L. Ed. 72, 77.

Nor can extra official or casual notice or a hearing granted as a matter of favor of discretion, be deemed a substantial substitute for the due process of law that the Constitution requires.

In Stuart v. Palmer, 74 N. Y. 183, 188, 30 Am. Rep. 289, which involved the validity or a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said: *'It is not enough that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard!*

The soundness of this doctrine has repeatedly been recognized by this court. Thus in Security Trust & S. B. Co. v. Lexington, 203, U. S. 323, 333, 51 L. Ed. 204, 208, 27 Sup. Ct. Rept. 87, the Court, by Mr Justice Peckham, said, with respect to an assessment for back taxes: 'If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor, notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, *but the question is whether any notice is provided for by the statute*' (citing the New York case). So, in *Central of Georgia R. Co. v. Wright*, 207 U. S. 127, 138, 52 L. Ed. 134, 141, 28 Sup. Ct. Rep. 47, the court said: 'This notice must be provided as an essential part of the statutory provision, and not awarded as a mere matter of favor or grace.'

In *Roller v. Holly*, 176 U. S. 398, 409, 44 L. Ed. 520, 524, ... Sup. Ct. Rep. 410, the court declared:

> 'The right of a citizen to due process of law, must rest upon a basis more substantial than favor or discussion.'

And in *Louisville & N. R. Co. v. Central Stock Yards Co.*, 212 U. S. 132, 144, 53 L. Ed. 441, 446, 29 Sup. Ct. Rep. 246, it was said:

> 'The law, itself must save the parties' rights, and not leave them to the discretion of the courts as such.'" (Emphasis added.)

There must be found in the law itself a reasonably clear formula by which the grantee of legislative power granted must be governed.

An Act which does not lay down rules and definitions by which the administrative officers may be guided in the exercise in the discretion vested in him is incomplete.

The test is whether the provisions are within the Act of Congress itself are sufficiently definite and certain to enable one reading it to know his right and obligation.

It is expressed by the court in the case of *Wichita Ry. & Light Co. v. Public Utilities Com.*, 260 U. S. 48, 59 (1922):

> "In creating such an administrative agency the legislature, to prevent it being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and set forth certain rules for its guidance in the performance of its function. It is a wholesome and necessary principal that such an agency must operate through the procedure and rules enjoined, and show a substantial compliance therewith to give validity to its actions."

A biased administrative tribunal does not afford due process as statutes purporting to confer legislative powers on administrative officials are invalid as denying due process (....., 261 U. S. 165 (1923).)

Property cannot be taken under order of an official or board without notice, since the due process clause extends its protection to such a taking of property; *Boeing Air Transport v. Farley*, 75 F. (2d) 765.

The law authorizing administrative hearings must require notice or it will be unconstitutional. In the case of *Seal v. Utah-Idaho Cent. Iron Co.*, 305 U. S. 177 (1938); p. 182, the court stated:

> "The requirement of a 'hearing' has obvious reference to the tradition of a judicial proceedings in which evidence is received and weighed by the trier of the facts.' The 'hearing' is 'the hearing of evidence and argument.' *Morgan v. United States*, 298 U. S. 468, 480. *And the manifest purpose in requiring a hearing is to comply with the requirements of due process upon which the parties affected by the determination of an administrative body are entitled to insist. Interstate Commerce Comm'n v. Louisville & Nashville R. Co.*, 227 U. S. 88, 91." (Emphasis added.)

Because the act there under consideration contained within itself such requirements it was held to be constitutional.

In *Chester C. Fosgate Co. v. Kirkland*, 19 Fed. Supp. 152 (1937) (D. C. Florida), plaintiff sought to enjoin the Secretary of Agriculture and his subordinates from the enforcement of the Agricultural Adjustment Act. (U. S. C. A., Sec. 608c.)

The court then held that the Secretary of Agriculture was not an indispensable party. (p. 156.)

The contention was made by the defendant control committee that plaintiffs should first pursue their administrative remedies before resorting to the court. *The court held that because the Act was void, the administrative provisions would fall with it.* (p. 157.)

The court, however, added that the questions involved were questions of law and not administrative questions and *that the Secretary of Agriculture in any event had no jurisdiction to determine such questions.* The court also stated that the:

> "so-called administrative provisions of the Agricultural Adjustment Act entirely dispense with the right of trial by jury guaranteed by the seventh Amendment to the Federal Constitution as applied to the determination of such questions as are embodied in said petitions." (p. 157.) *"It is a further fundamental element of due process of law that no judge shall try his own case.* Sections 608(b) and 608(c) of 7 U. S. C. A. require that the Secretary of Agriculture shall be one of the contracting parties to any marketing agreement executed pursuant to the act, and yet the Secretary is set up as the judge to try issues of fact and issues of law attacking the validity of such an agreement." (Emphasis added.)

In other words, the Secretary cannot be both party and judge. (p. 157.)

The court also held that Sections 608(b) and 608(c), undertaking to authorize the approval of marketing agreements by the Secretary of Agriculture and undertaking to define his powers and duties, are severally void because

they undertake to delegate to the Secretary legislative power contrary to Article 1 of the Federal Constitution. (p. 162.)

The court stated that the provisions of the Agricultural Adjustment Act were similar to those in the acts involved in the *Ryan* and *Schechter* cases. (p. 162.)

The Act was then held to be an unconstitutional delegation of legislative power contrary to Article 1, and the Fifth Amendment to the Constitution.

The legislature may not, under the guise of protecting public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations, citing:

> *Lawton v. Steele*, 152 U. S. 133, 137, 14 S. Ct. 499, 501.

The District Court added that the rule there stated was equally applicable to an act of Congress, such as this Act.

The court further cited as authority on the general subject the leading case of:

> *Yick Wo. v. Hopkins*, 118 U. S. 356.

Asher v. Ingels, 13 Fed. Supp. 654 (D. C. Calif., 1936), wherein the California Vehicle Code on registration of out of State cars in California held unconstitutional by three judge court, as the permits given not granted as a matter of right:

> "It may or may not be granted arbitrarily by the department of motor vehicles. California Vehicle Code, Sec. 147." (p. 659.)

In *Roller v. Holly*, 176 U. S. 398, the defendant was served with summons in a foreclosure matter in Virginia. The action was commenced in Texas where the property was located.

> *"The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion."* (p. 409.) (Emphasis added.)

Property cannot be taken under order of an official or of a board without notice, since the due process clause extends its protection to prohibit such a taking of property.

> *Boeing Air Transit v. Farley*, 75 F. (2d) 765 (1935).
>
> "Here the question of right of Postmaster General to cancel contracts for the carriage of air mail and to impose penalties without prior notice, hearing or opportunity to be heard, as permitted by Postal Act (3950 Rev. St. U. S., 39 U. S. C. A. 432), was sought to be enjoined."

The court, after finding that such mail contracts were "property," quoted at length from the case of *Ochoa v. Hernandez y Morales*, 230 U. S. 139.

Due process of law was defined as follows:

> "Without the guaranty of 'due process' the right of private property cannot be said to exist, in the sense in which it is known to our laws. The principle, known to the common law before Magna Charta, was embodied in that Charter (2 Coke, Inst. 45, 50), and has been recognized since the Revolution as among the safest foundations of our institutions. Whatever else may be uncertain about the definition

of the term 'due process of law,' all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing."

Dismissal affirmed on other grounds, to wit: Government has not consented to be sued.

Hovey v. Elliot, 167 U. S. 409 (1897).

Arose out of order for contempt. Bill in original action dismissed for contempt. (p. 410.)

"Can it be doubtful that due process of law signifies a right to be heard in one's defense." (p. 417.)

If not provided it is violative of the Constitution.

Inland Steel Co. v. National Labor Relations Board (1940, C. C. A. 7).

Petition to set aside order of the National Labor Relations Board, 29 U. S. C. A., Secs. 151-166.

Order set aside and remanded to Board for new hearing.

"That a trial by a biased judge is not in conformity with due process is sustained by the authorities. In *Tumey v. Ohio*, 273 U. S. 510, 535, 47 S. Ct. 437, 445, 71 L. Ed. 749, 50 A. L. R. 1243, the court said:

'No matter what the evidence was against him, he had the right to have an impartial judge.'

The court, in *Jordan v. Massachusetts*, 225 U. S. 167, 176, said: 'Due process implies a tribunal both

impartial and mentally competent to afford a hearing. . . ." (p. 20.) The court quoted from *People v. Naimark*, 154 App. Div. 760, 139 N. Y. S. 418, 420, where it said: 'the first idea in the administration of justice . . . is that a judge must necessarily be free from all bias and partiality. *He cannot be both judge and party, arbiter and advocate in the same cause. Mankind are so agreed in this principle that any departure from it shocks their* common sense and sentiment of justice." (p. 20.)

Not only is Section 5(d) of the H.O.L.A. entirely barren of any semblance of a requirement that the rules, enactments, the board (now the one man board) is authorized to make should contain any of the safeguards of due process required by the Constitution, but likewise a searching of the entire H.O.L.A. itself fails to disclose any such requirements.

The Act does not make any mention of, nor require that the acts, fiats or edicts which the so-called board is authorized to enact shall contain any provision for notice, hearing, opportunity to be heard, right to be confronted with the accusers, right of subpoenaing of witnesses, nor any of the other exceptions for recognizing rudiments of due process. There is no prohibition any place within Section 5(d) of the H.O.L.A., nor anywhere else in the entire Act itself, which prohibits the board—now solely composed of the defendant-appellant, the sovereign Fahey, from issuing his own edicts, appointing himself or his

minions, both prosecutors and judges, and in truth and fact, this is exactly what he has done.

After the seizure of the association and all of its assets, including the seizure of all records, documents and evidence which were needed for their defense and protection, graciously and magnanimously ordered that a hearing should be held and appointed one of his subordinates to act as hearing officer, but provided that he "shall not have power to decide any motion to dismiss the proceedings or other motions that involve final determination of the ultimate issue; . . ." but allowed the hearing officer to adjoin the hearing from time to time and to do such things as are necessary and proper to the orderly conduct of such hearing, but he "shall not have power to finally determine the ultimate issue. The announced purpose of the said order was to permit the association, without its records or any evidence, to "appear and show cause why the conservator should not have been appointed and why an order should be entered by the Federal Home Loan Bank Administration (the appellant-defendant, the sovereign Fahey who had appointed the conservator in the first place), discharging the conservator." [R. 94-96.]

It appears from the mere reading of this order that the defendant-appellant, Fahey the sovereign, now seeks to also be chief justice and to reserve unto himself the power to pass final judgment upon himself and his own acts. In the face of this mockery of justice and the duly constituted courts of our lands, the mere fact that no notice

is provided, nor was any given to the shareholder members, the true mutual owners of the association and all of its assets, is probably of small consequence. The shocking disregard by even a public official of the fundamental concepts of justice and the reversion to the pre-revolutionary day reign of governing the people by rule of fiat is probably one of the most important issues in this case. Such retrogression in the concepts of justice was recently rejected by this court less than two months ago when in the case of *U. S. v. Louis, et al., supra,* in one of the opinions it was stated that "'a government of laws, not of men' was the rejection in positive terms of rule by fiat whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to the law as finally pronounced by this court," and further in the same opinion it was stated by this court, "no one, no matter how exalted his public office, nor how righteous his private motive, can be judge in his own case, that is what courts are for." Hence, once again, it is demonstrated that not only is the Home Owners Loan Act entirely barren of any requirement that the fiat and edicts which it authorizes, the board now consisting of one man, defendant-appellant Fahey, to enact, be likewise the fiats and edicts actually enacted and issued pursuant to this delegated unfettered legislative power in themselves also violates and shocks the concepts of natural justice as well as being repugnant to the Constitution and in violation of the Constitution that are deprivation of private property.

B.

Collateral Procedural and Jurisdictional Questions Attempted to Be Raised by the Defendant-Appellants in an Effort to Divert This Court From Passing Upon the Unconstitutionality of Section 5 (d) H. O. L. A.

We next turn to a brief consideration of the various attempts made by the deefndant-appellants to divert this court's attention from the main and primary issue of this case, to-wit, the unconstitutionality of Section 5(a) of the Home Owners Loan Act of 1933. In the main these are the same "red herring" issues which were loosed by the defendant-appellants in the Pacific in an effort to divert the statutory three-judge trial court's attention from the main primary issue of unconstitutionality and these issues should now be as dead as that same proverbial "red herring."

None of these collateral issues, irrespective of how decided by this Honorable Court would be determinative of this litigation, but could only result in the requirement of further litigation. Whether these plaintiff-appellees are ultimately required to commence their action by submitting to a biased predetermined so-called administrative hearing before being allowed to enter the doors of the courts of justice of the United States or whether or not these plaintiff-appellees should be deemed deprived of their right to challenge the unconstitutionality of an enactment of Congress, or whether the statutory three-judge court is to be required to spend further valuable time taking irrelevant testimony conclusively establishing the arbitrary biased acts of the defendant-appellants, or whether these plaintiff-appellees are to be required to com-

mence their litigation on the Atlantit Coast instead of upon the Pacific Coast where their homes are located would not aid this court one whit in determining the unconstitutionality of Section 5(d) of the H.O.L.A.

I.

The Exhaustion of Administrative Remedies Is Not a Prerequisite Where No Valid Unbiased Administrative Hearing Is Afforded.

This Honorable Court's attention is respectfully directed to the fact that these plaintiff-appellees, as a shareholder members protective committee, suing as representatives of some sixteen thousand (16,000) shareholder members of the Long Beach Federal Savings and Loan Association commenced this action by appropripate complaint and pleadings in the District Court of the United States for the Southern District of California, Central Division, on May 27, 1946 [R. 1], some eight days before the so-called administrative hearing, Order No. 5309 was issued on June 5, 1946 [R. 94].

Further it should be borne in mind that the plaintiff-appellees, the Shareholder Members Protective Committee did not, nor so far as the record discloses, did any of the sixteen thousand shareholder members of the Long Beach Federal Savings and Loan Association, other than the dispossessed directors and officers, ever request any so-called administrative hearing.

By the provision of Section 206.2 of the Rules and Regulations promulgated by the defendant-appellant Fahey, the only request for a so-called administrative hearing which could be made would have first to be authorized by its board of directors, the very persons ac-

cused by the defendant-appellant, the prosecutor Fahey, with unsupported charges of being unfit to represent the shareholder members.

If Section 5(d) of the Home Owners Loan Act is unconstitutional, as contended by the appellees and is found so to be by the statutody three-judge court especially created and charged by an Act of Congress with this responsibility, then the so-called administrative hearing alleged proffered would be bottomed upon an unconstitutional act. Such a so-called administrative hearing would have not even quasi-judicial authority. The unconstitutionality of the Act makes the proffered offer of a so-called administrative hearing void *ab initio*. A law authorizing an administrative hearing must require notice or it will be unconstitutional as lacking in providing due process.

Shields v. Utah-Idaho Railroad Co., 305 U. S. 177 (1938), at 182.

Nowhere in the Home Owners Loan Act is there a single word authorizing the creation of a system of courts for so-called administrative hearings or otherwise.

Nowhere is there any requirement of notices, pleadings, evidence of trial, findings of fact, or decision of juries or judgments.

Nowhere is there any authorization to create courts with the power of swearing witnesses or to compel the production of evidence, to subpoena witnesses or to require them to answer or to hold them in contempt or to incarcerate contemptors.

The act being entirely barren of any mention of these historic incidents of due process, it can hardly be stated

that the H.O.L. Act enacted by Congress provides or affords any due process against the taking or property.

In the case of *Ochoa v. Hernandez*, 230 U. S. 139 (1913), the United States Supreme Court, clearly enunciated the principle:

> The guaranty of due process of law inhibits the taking on one man's property and giving is to another, contrary to settle usuages and modes of procedure, without notice and opportunity for a hearing. . . . "Without the guaranty of 'due process' the right or private property cannot be said to exist, in the sense in which it is known to our laws. The principle, known to the common law before Magna Charta, was embodied in that Charter (2 Coke, Inst., 35. 50), and has been recognized since the Revolution as among the safest foundations of our institutions. *Whatever else may be uncertain about the definition of the term 'due process of law,' all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usuages and modes of procedure, and without notice or an opportunity for a hearing.*" (Emphasis added.)

In the case of *Chester C. Fosgate Company v. Kirkland*, 19 Fed. Supp., page 152 (1937), the District Court of Florida in an action to enjoin the Secretary of Agriculture and his subordinates from the enforcement of the Agricultural Act held that he was not an indispensable party, and denied the defendant's contention that the plaintiff should have first pursued their administrative remedies before resorting to the courts upon the ground that because the act was unconstitutional and therefore found the admin-

trative provisions thereof would fall with it, and further held that in any event, the Secretary of Agriculture had no jurisdiction to determine questions of law which were not administrative questions.

In so holding the court stated that the "so-called administrative provisions of the Agricultural Act entirely dispense with the right of trial by jury guaranteed by the Seventh Amendment to the Federal Constitution as applied to the determination of such questions as are embodied in said petitions." And at page 157 stated:

> "It is a further fundamental element of due process of law that no judge will try his own case."

Nowhere in Section 5(d) or elsewhere in the H.O.L. Act is there any authorization specified or implied empowering the board now composed of one man to create a system of courts, nor to clothe them with the necessary authority to subpoena and swear witnesses, to determine contempts, nor to place in custody contemptors.

In the case of *Myers v. Bethlehem Shipbuilding Corporation*, 303 U. S. 41-53 (1937), the Court after pointing out that the National Labor Relations Act contained ample statutory provisions providing for hearing and that its enforcement could only be had through appropriate courts with adequate opportunity for judicial review which afforded ample compliance with the constitutional requirements of due process, decided that Congress had power to vest exclusive jurisdiction in the Board and the Circuit Court of Appeals. Furthermore, the Court stated:

> "Since the constitutionality of the Act has been determined by our decision in *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301

U. S. 1, 108 A. L. R. 1352, and the defect in the bill is incapable of remedy by amendment, its dismissal should be directed."

Thus again we see that this Court has consistently followed its own rule that adequate standards and statements of legislative policies, together with appropriate safeguards of the constitutional requirements of due process must be contained within the Congressional enactment itself.

We do not understand the contention of the defendant-appellants Ammann and Fahey that they, their hearing officers and associates are superior to or endowed with great powers to judicially hear and determine matters, than those normally vested in the United States District Court. We therefore assume that the general rule that "statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect." is admittedly inapplicable in the instant case. (*U. S. v. United Mine Workers*, 91 L. Ed. Adv. Op. 595, decided March 6, 1947.)

In a suit brought by the United States against the State of California, *U. S. v. California*, 297 U. S. 175 (1935), to recover a penalty for violation of the Federal Safety Appliance Act, the State argued it was not subject to the act because of its sovereign rights. This Court disposed of this argument (pp. 188-189) by stating the argument was "not persuasive when weighed against the complete appropriations of the Court (District) and venue selected for the trial of issues growing out of the particular activity in which the state has chosen to engage."

There being no intimation anywhere in the Home Owners Loan Act of 1933, as amended, of even the semblance of a delegation by Congress to the Board (now composed of one man, the defendant-appellant Fahey) of any power, authority or rights to create courts nor to clothe them with the powers of subpoena of witness, or holding in contempt and of imposing fines and jail sentences upon contemptors, it would appear that the Board did not have any such powers, authorities, rights or privileges, pre-existing or otherwise.

Therefore, since the provisions of Section 380(a), Title 28, adopted August 24, 1937, specifically denies to the judges of the District Courts of the United States and to the justices of the Circuit Courts of the United States sitting individually, the authority and jurisdiction to issue any injunction, either interlocutory or permanent "suspending or restraining the enforcement, operation or execution of, setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States," we submit that the exclusive jurisdiction to hear an issue of this type is in the three-judge court provided in Section 380(a) and we hardly believe that the defendant-appellants Ammann and Fahey and their associates could create an administrative tribunal authorized to grant the relief prayed for in the brief to issue an injunction to restrain *themselves* from acting or continuing to act under an Act of Congress upon the ground that such Act or a part thereof is repugnant to the Constitution of

the United States. Therefore, the relief prayed for in the instant case, to-wit, injunctions to restrain further actions under an unconstitutional Act of Congress, could not have been obtained in the so-called administrative tribunal, even had a fair administrative tribunal been available; and for these plaintiffs to have made application for such a hearing before a prejudiced administrative tribunal which was without power to grant the relief sought and prayed for, to-wit, the declaration of an Act of Congress to be unconstitutional, would have been an idle act.

Therefore the proper and in fact the only place for the commencement of this action seeking a determination of constitutionality of an Act of Congress and injunctive relief to restrain the proceedings thereunder was in the United States statutory court composed of three judges especially created for that purpose and charged by Congress with the primary responsibility of determining the unconstitutionality of acts of Congress. (Sec. 380(a), Title 28, U. S. C.)

The primary purpose of the defendant-appellant Fahey, who now would wear the robe of a justice in urging that these plaintiff-appellees must first exhaust their administrative remedies and ask his judicial favor is to deprive and circumvent the duly constituted courts of their jurisdiction to hear and determine the unconstitutionality of enactments of Congress.

II.

Plaintiff-Appellees Are Not Estopped to Raise the Question of Unconstitutionality of a Part of an Act of Congress.

(a) Estoppel Is Not Applicable to Prevent an Unconstitutional Portion of an Act From Being So Declared Unconstitutional.

Estoppel is an equitable defense. Courts of equity will only grant their benign protection to those who come with clean hands, and then only for the purpose of preventing a wrong. Estoppel is a shield, not a sword, to be used in administering the *coup de grace* or to extinguish the life of a healthy, valid, growing organism such as this Association. The worthwhile achievements of this Association in the financing of homes for more than eight thousand southern California residents and in providing safe investments (safe, at least, until the time of seizure by defendant-appellant Fahey) for its approximately 16,000 shareholder members, has been a great benefit to its home community, the city of Long Beach, and, in fact, to all of southern California. These worthwhile accomplishments of the Association explain why the aroused citizenry of southern California, and, in fact, all of the sovereign state of California, have aided and are aiding and assisting this, the peoples', Association from being destroyed by the ruthless uncalled for seizure without notice or hearing by the defendant-appellant Ammann, the minion of the sovereign defendant-appellant Fahey.

Counsel for the defendant-appellants take the position that the plaintiffs-appellee can not raise a constitutional question because the legislation they seek to attack on con-

stitutional grounds is the same act under which this Association is organized and has operated.

In the first place, the court's attention is called to the fact that the Long Beach Federal Savings and Loan Association is not a corporation organized under any state corporation act, as is true of many plaintiffs in the cases cited in the brief by counsel. Furthermore, it must be kept in mind that the Association here involved is not a corporation at all in the sense and under the definition usually conceded to that title.

In the second place, it must be further kept in mind that plaintiff-appellees do not seek to attack the act under which the Association was organized generally, but that these plaintiff-appellees are taking the position that the particular section of said act, providing for regulations, is unconstitutional because of the manner in which it endeavors to provide for such regulations. It is not attempted in this litigation to state that the entire act or acts providing for the federal savings and loan associations are unconstitutional.

Estoppels are generally classified as one of the following kinds:

1. By deed
2. By matter of record
3. By matter *in pais*, which last are also termed equitable estoppels. (See Bouvier's Law Dictionary, Rawld's Edition, Vol. 1, p. 1078.)

It is the third type of estoppel generally called estoppel *in pais*, or more appropriately called equitable estoppel or quasi estoppel, which is here involved. Under that type of equitable defense, courts have in instances prohibited

parties from questioning the constitutionality of an act under which they had been incorporated on the theory that the charter secured by the corporation was a contract between the corporation and the governmental agency or the government so issuing it.

However, in order to maintain such a position and to finally hold that such a party can not challenge the constitutionality under which it is organized, it is submitted that the challenge must go to the entire act or must go to some part thereof which can not be disassociated from or separated from the rest of the act.

> "The mere fact . . . . that a coporation is organized under a statute does not estop it to deny the constitutionality of a provision of the statute which constitutes a distinct legislative enactment and the elimination of which would leave in full force the provisions under which the corporation was organized."
>
> Corpus Juris Secundum, Vol. 16, Sec. 90, p. 189;
>
> *Seaborn v. Wingfield*, 48 P. (2d) 881, 56 Nev. 269;
>
> *Philadelphia, etc. Railroad Co., Petitioner*, 53 Atl. 181, 203 Penn. 354.

It is submitted, therefore, that in the instant case, the plaintiff-appellees having made no attempt to have declared the entire act unconstitutional but seeking only to have declared unconstitutional that section of the act having to do with the delegation of authority that therefore the cases cited by the counsel for defendant-appellant to the effect that plaintiff-appellees are estopped to present the unconstitutionality of those sections, are inapplicable.

It is furthermore submitted that these plaintiff-appellees have at no time asserted any rights under the statutes, nor have they taken any affirmative steps to do so, and that under such circumstances they are further exempted from the inhibition to attack the constitutionality of the act, or a part thereof.

Buck v. Kuykendall, 267 U. S. 307;

Thompson v. Consolidated Gas Utilities Corporation, 300 U. S. 55;

St. Louis Malleable Casting Co. v. George C. Prendergast Construction Co., 260 U. S. 469.

Furthermore, the doctrine of estoppel *in pais* has been held inapplicable to one who has not been guilty of fraud, or whose conduct has not misled another as to validity of a statute simply because he has treated as legal and valid an act void and open to the inspection of all.

O'Brien v. Wheelock, 184 U. S. 450.

Thus, it has been held in instances that one will not be estopped by his acts or omissions to question the constitutionality of a statute if his adversary is not thereby prejudiced.

Van Camp Seafood Co. v. Newbart, 76 Cal. App. 445.

And furthermore, the application of the doctrine asserted by counsel for defendant-appellants has been decidedly limited by the holding that where representation as to the validity of a statute can not have been relied on by his adversary, there can be no estoppel.

Eyers Woolen Co. v. Town of Gilsum, 84 N. H. 1;

Morehouse v. Employers Liability etc. Co., 119 Conn. 416.

It is submitted that "there is no such thing as a void enactment being made valid by estoppel," as the court stated in *Central Branch Union Pacific R. Co. v. Smith*, 23 Kan. 745, 754, where a corporation was allowed to deny the validity of a statute under which bonds were issued by it.

If the section of the act attacked here as unconstitutional is void because unconstitutional and being unconstitutional it does not exist it is difficult to follow reasoning which brings the non-existent or dead act to life by the negative action of estoppel.

While cases will hold that a person will be presumed to have entered into a contract with reference to existing laws it is submitted "valid laws" are meant and that only the provisions of the contract which are not unlawful, but are legally enforceable will control the parties thereto.

In *Morse v. Metropolitan S. S. Co.*, 88 N. J. Eq. 325, the Court recognized this reasoning and stated:

> "The fact that the defendant incorporated under an act, which contained an unconstitutional provision cannot render the provision enforceable, now confer any power on the court to enforce it."

Estoppel as a result of a prior position in judicial proceedings "cannot be invoked however, where the position first assumed was taken as a result of ignorance, or mistake or through the act or fault of the party claiming the estoppel; and, clearly, cannot be invoked where the position complained of is not inconsistent with a former position."

31 Corpus Juris Secundum 372, Estoppel, Sec. 117.

Here, the officers of the defendant Long Beach Federal Savings and Loan Association, and they only could ask for the administrative hearing. When they learned of the bias and prejudiced attitude of the defendant-appellant Fahey and that he would personally endeavor to pass on his own wrongful acts, the subject of the complaint herein, the said officers still did not change their position of asking for an administrative hearing, but did object to the procedure and to the personalities, endeavoring to assume a judicial character. There is nothing inconsistent in a party plaintiff objecting to the defendant appearing as the prosecutor and also as judge and jury and appeal court as well. That essentially is the position of the officers of the Long Beach Federal Savings and Loan Association.

The position of the plaintiff-appellees representing the 16,000 shareholder members is even stronger. Are they all to be estopped from even presenting to this court this, their petition to have an unconstitutional act, under which their life savings have been seized, from being declared unconstitutional.

It is submitted no estoppel has arisen because of any taking of benefits under the charter of the Long Beach Federal Savings and Loan Association, as there is now absolutely no governmental finances of any kind, or character whatsoever in the Association.

Electric Co. v. Dow, 166 U. S. 489 (1897), cited by counsel for defendant Ammann is not in point, as it does not involve an estoppel to the raising of the constitutionality of an act, under which charters of incorporations have been issued.

Grand Rapids & Indiciana Rwy. Co. v. Osburn, Commisisoner of R. R., 193 U. S. 17, 24 S. Ct. 310 (1903),

is not in point, as the matter there was one of rates, which were established by a State Act, under which the company was incorporated and was then charging rates, and had at all times been charging rates, under the very provisions of the Act, which was there sought to be attacked.

The claim that invalid regulations are part of the Association's charter is not sound, as has heretofore been pointed out.

It is again submitted that only valid laws and regulations may be considered to be a part of a charter.

When the Association received its charter in 1934, amendments to the regulations could only be promulgated by a five man Board and that

> "not more than three members of the Board shall be members of the same political party." (Section 1437, Title 12, Federal Home Loan Bank Act, Federal Code.)

Likewise, there were then regulations specifying means of redress from wrongful actions by the Administration. When the defendant-appellant Fahey became the dictator and repealed the regulations providing redress from wrongful acts, which so changed the safety and assurance of doing business of not only the defendant-appellee, but of all federal savings and loan associations; now subject to the caprice of the defendant-appellant Fahey, there was a change of circumstance, since which time the defendant-appellee has not accepted any of the benefits, now financing from the Federal Government, under this Act or any part thereof.

The remaining cases cited by counsel for the defendant-appellants, all come within the distinguishing features heretofore pointed out in connection with other cases cited.

(b) The Defendant-Appellants Ammann and Fahey, Who Now Urge the Equitable Doctrine of Estoppel to Prevent These Shareholder Members From Raising the Question of Unconstitutionality, Should More Properly Under the Rules of Good Conscience and Equity Be Themselves Estopped.

The defendant-appellants Ammann and Fahey now urge that the provisions of the Association's charter constitute an estoppel barring these, the plaintiff-appellees, from raising the question of unconstitutionality of Section 5(d) of the Home Owners Loan Act of 1933, as amended, which unlimitedly delegates unfettered legislative authority to enact legislation dealing with the subjects of dissolution, consolidation, reorganization and merger and the appointment of conservators. By this same charter (A. B. 37) it was provided that:

> "The association shall have perpetual succession and power . . . to wind up and dissolve, merge, consolidate, or reorganize in the manner provided by law and rules and regulations made thereunder;
>
> The association shall have such powers as are conferred by law and shall exercise its powers in conformity with the Home Owners' Loan Act of 1933 and all laws of the United States as they are now, or as they may hereafter be amended, and with the rules and regulations made thereunder which are NOT IN CONFLICT WITH THIS CHARTER." [R. 164.]

If it is deemed that the estoppel here attempted to be raised by the defendant-appellants Ammann and Fahey is an estoppel by contract, it would appear that the rule of estoppel by contract might well be here more properly invoked against the defendant-appellants Ammann and Fahey themselves.

The charter upon which they rely as a contract was entered into by the "Board", which was then composed of five men and was non-political in character by virtue of the specific provisions of the Act of Congress.

The defendant-appellant Fahey, having now become by successive steps the sole member of the "Board", and having taken on the attributes of a dictator by his adoption of a policy of administration highlighted by the watchword "rule or ruin", now seeks to abnegate his predecessor's contract.

The charter, the so-called contract, provides that "The association shall have perpetual succession and power . . ." [R. 164], yet the defendant-appellant Fahey now seeks to destroy and terminate the perpetual succession of such Association.

Likewise the charter, the so-called contract, specifically provides by its own terms that the rules and regulations made under the Home Owners Loan Act are only applicable to this Association in so far as they "ARE NOT IN CONFLICT WITH THIS CHARTER". [R. 164.]

Yet, now the defendant-appellant Fahey endeavors to impose upon these plaintiff-appellees, representing the 10,000 shareholder members of the Association, his fiats and edicts for the appointment of conservators and to "wind up and dissolve, merge, consolidate, or reorganize"

this Association; although by the same charter, which he claims estops these plaintiff-appellees from questioning the constitutionality of the enactment of Congress, provides within itself that "the association shall have perpetual succession and power . . . to *wind up and dissolve, merge, consolidate, or reorganize* in the manner provided by law and rules and regulations made thereunder; . . ."

It is far more logical that the defendant-appellants Ammann and Fahey are estopped by the powers to dissolve, merge, consolidate, or reorganize having been delegated to the Association by their predecessors (the five-man non-political Board) than that these plaintiff-appellees representing the 10,000 shareholder members, most of whom no doubt were not members at the time of the issuance of this charter, should be estopped by such fallacious reasoning from presenting to the duly constituted courts of the land the question of the unconstitutionality of Section 5(d) of the Home Owners Loan Act.

Further, the first charter of the Association contained paragraph 15 as follows:

> "The association shall at all times be subject to the provisions of the Home Owners' Loan Act of 1933, providing for Federal savings and loan associations, and to any amendments thereof, and to any *valid* rules and regulations made thereunder as the same may be amended from time to time." [R. 160.] (Emphasis added.)

The plaintiff-appellees submit that rules and regulations bottomed upon an unconstitutional statute are not "valid".

Therefore, the plaintiff-appellees, and the 16,00 shareholder members and residents of southern California whom they represent, should not be estopped by *invalid* rules and regulations which, in the first place, because of their invalidity would not be binding upon the Association in any event.

It has already been amply pointed out that the rules and regulations so-called existent at the time of the issuance by the five-man non-political Board which chartered this Association did, invalid though they may have been, attempt to provide some semblance of the rudiments of due process and at least establish a policy of affording associations to be heard and to be confronted by their accusors before their seizure, dissolution or merger, and to follow a policy of affording notice of such seizure and opportunity to be heard, to the true owners of such mutual association thereof, the shareholder members. (Sections 45 and 46 of original Rules and Regulations enacted June 13, 1943 by five-man non-political Board.) [R. 281-283.]

Thereafter, by successive steps, even these rudiments of due process were eliminated as the defendant-appellant Fahey transmuted the federal home loan administration from the democratic, purely supervisory agency authorized by Congress into a thing of oppression for the furtherance of his own dictatorial policy of rule or ruin.

These plaintiff-appellees are here primarily attacking the unconstitutionality of Section 5(d) H. O. L. A. which unlimitedly delegates unfettered legislative powers without any provision for the constitutionally required safeguards of due process. Unconstitutional though the so-called rules and regulations, fiats and edicts of the defendant-appellant Fahey may be, that is not the primary question before this Honorable Court, but rather only reveals the unlimited extent to which a dictator will go when clothed with "a roving commission to inquire into evils (even imaginary) and upon discovery correct them" according to his own whim or caprice. (Interpolation added.)

These United States are a united nation, indivisible, and founded upon the declared principle that all citizens are afforded equal protection under the Constitution; and yet the defendant-appellants Ammann and Fahey would have this court divide this nation into two classes of people: those afforded the protection of the Constitution and those to whom the protection of the Constitution is denied, by a so-called estoppel.

We submit this Honorable Court will not permit itself to be misled by the defendant-appellants' falacious reasoning in their efforts to divert this court's attention from the primary question, to-wit: that passing upon, determining and declaring that Section 5(d) of the H. O. L. A. is unconstitutional as being an unlimited delegation of unfettered legislative authority, without providing any of the constitutionally required safeguards of due process.

III.

The Decree Was Not Premature.

Defendant-appellants contend the court erred in entering a final judgment (A. B. 90-95). In support of this contention defendant-appellants argue (A. B. 93) a judgment should not be entered before answer or trial. This argument is not supportable in view of the situation which existed at the time the decree was entered.

The various motions came on for hearing before the three judge statutory court on July 15-16, 1946 [R. 607-704, Rep. Tr. and R. 306-308 and 317-318 Clerk's Minutes]. Among the matters presented to the Court at that time was the defendant-appellant Ammann's motion to dismiss [R. 317] and the defendant-appellant Fahey's motion to dismiss or in lieu thereof to quash service of summons [R. 317]. Briefs and affidavits for and against these motions had previously been served and filed and oral argument took place [R. 318-491]. The Court properly took the view [Opinion R. 375] that the motions to dismiss were based on the ground "that the provisions of Sec. 380(a) have no application to the law and facts as presented by said application" and "that the instant proceeding seeks to restrain the operation of rules and regulations promulgated by the Board rather than the enforcement, operation or execution of or setting aside in whole or in part of an act of Congress on the ground that the law itself is unconstitutional. We think the contention is without merit" [R. 375].

The Court in its opinion [R. 375-376] then stated its reason for ruling against the motions to dismiss as being that the authority to do the acts sought to be restrained, if found to exist, must "bottomed on subsection (d) of

Section 5" of the Act and stated, "It is on the direct operation of this statute that the commisisoner must rely.

Threatened action under the authority of the statute is sought to be restrained on the ground that the statute is unconstitutional and void in that it attempts to confer legislative power on the board. Clearly this proceeding comes within the provisions of Section 380(a) and the question is required to be heard by a three-judge court"

The findings of fact followed the opinion with the finding the defendant Fahey had been properly served [R. 495] and the Court concluded the motions to dismiss and to quash service should be denied [R. 495] and it was so ordered [R. 496].

Jurisdiction having been acquired and the remaining issues being, in the words of Judge Orr, "bottomed on subsection (d) of Sec. 5" [R. 375-376] of the Act and the issue of the constitutionality of that subsection having been exhaustively presented to the court by affidavits, points and authorities and oral argument [R. 607-704] both before and after hearing [R. 704] and the court being advised of all facts having to do with the question of constitutionality did not require the idle motions of requiring a trial and so rendered its decision on the main issue of constitutionality and the issues governed by the decision thereon [R. 489-500]. Any other course would have involved nothing but procedure, time and expense on the part of the Court, counsel and parties. The three-judge court was convened under Sec. 380(a) of Title 28 U. S. C. to pass upon the question of constitutionality and it did so. Having done so there was no reason for not making the injunction a permanent one.

In a comparable situation Judge Paul McCormick of the Southern District of California, in the case of *Coca-Cola Company v. Los Angeles Brewing Company*, 1 F. R. D. 67, in passing on a motion for a preliminary injunction to restrain the use of the term "coke" after ascertaining that a further hearing would be useless, proceeded to make his injunction permanent and in doing so used the following language in his opinion:

> "What is there here that can be modified or changed or that needs any further exploration? What factual situation is there that could be more definitely presented to the court in January than today? I think there is nothing. There may be many more affidavits filed on each side of the question. There may be a great deal of oral testimony developed on both sides of the issue. There may be extensive arguments made as to the effect of these matters, but upon analysis, the same issue will be present. If this is the case it should be determined summarily."

The right of a Federal Court, sitting in equity, once having assumed jurisdiction to give a complete remedy and to issue a permanent injunction upon the hearing upon the motion for a preliminary injunction is not a point *de novo*. It has been decided by this court in the case of:

Sterling v. Constantin, 287 U. S. 378,

wherein this court in the person of Chief Justice Hughes, in affirming the order of a three-judge statutory court in granting an interlocutory and permanent injunction, even as was done by the court below in this proceeding, re-

strained the governor and certain military officials of the State of Texas from enforcing military orders restricting the production of plaintiffs' oil wells, stated at page 393 as follows:

> "The jurisdiction of the district court so constituted and of this court upon appeal, extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decision on such of the questions as in its opinion effectively dispose of the case."

The attention of the court is respectfully directed to the fact that issues of fact have not been raised by the pleadings and that the sole question before the court is one of law, to wit: the constitutionality of that section of the Home Owners Loan Act under which the appellants have assumed to act.

Another case wherein an interlocutory and final judgment was entered by the trial court upon an application for the preliminary or interlocutory injunctions was that of:

Allegheny Oil Co., v. Snyder, et al., 106 Fed. 764. (Certiorari denied in 181 U. S. 618.)

That case was one wherein a preliminary injunction was sought to stay the acts of the lessee under an oil lease executed subsequent to the lease held by the complaining party. At the hearing, and in previous hearings in the state court, the first lease was held to have been valid

and therefore the attempted second lease had necessarily failed. In its opinion the Court stated:

> "In such cases in courts of the United States may proceed to administer final relief without putting the parties to the expense and delay of protracted litigation. Mast, Foos & Co. v. Stover Mfg. Co., 177 U. S. 485, 20 S. C. 708, 44 L. Ed. 856, citing with approval, Cardt v. Brown, 113 Ill. 475; Green v. Mills, 16 C. C. A. 516, 69 F. 852, 25 U. S. App. 383; and the decision of this court in Mayor etc. of Knoxville v. Africa, 23 C. C. A. 252, 77 F. 501, 47 U. S. App. 74. Finding no error in the decrees entered in the court below, the same will be affirmed."

Under the provisions of Rule 54 of the Federal Rules of Civil Procedure the court was authorized to determine the issues material to a particular claim "at any stage."

This rule provides in part as follows:

> "(b) When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counter-claims arising out of the transaction or occurrence, which is the subject matter of the claim, may enter a judgment disposing of such claim.
>
> "(c) . . . Except as to a party against whom a judgment is entered by default, every final judgment shall grant relief to the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."

From the foregoing it should be clear that:

1. More than one claim having been presented by the plaintiff-appellees and some of the other appellees, and the Court having found upon one claim that the statute in question, and on which the defendants Ammann and Fahey must rely, was unconstitutional and void, that a judgment can and should be entered on that claim.

2. In granting such judgment the Court can and must give all relief necessary as demonstrated by the pleadings on file.

The decision of the three-judge court was essentially a decision on the law and did not involve a question of fact once the jurisdictional facts were established. This being so a further hearing on facts would be of no aid in determining the question of constitutionality.

If the law is found to be unconstitutional the defendant-appellants were mere trespassers and their seizure under a void act would necessarily be unlawful and it follows that the management elected by the owners, to wit: the shareholder members, should be restored to possession. The Court having found the subsection in question to be repugnant to the constitution therefore did the only logical and possible thing for it to do—it ordered the return of possession of the Association in its decree.

IV.

Jurisdiction.

Throughout the hearing in the court below and in their pleadings filed herein, the defendant-appellants have consistently urged that the jurisdiction of the trial court was predicated on Section 112 of Title 28 U. S. C. In this regard they have apparently entirely overlooked the exception contained in Section 112 itself which provides in part as follows:

> ". . . except as provided in Sections 113 to 118 of this title, no special suit shall be brought in any district court against any person by any general process or proceeding in any other district than that whereof he is an inhabitant."

As has already been pointed out, *supra*, this action was not commenced under Section 112, it was in fact, commenced under Section 118 of Title 28 U. S. C. Section 118, being an express exception from the provisions of Section 112 covers actions which are *in rem* and all actions to be brought for the purpose of removing any encumbrance or lien, or cloud upon the title to real or personal property within the district where such suit is brought. In view of the fact that it is admitted that all of the assets and property of the association are located within the jurisdiction of the United States District Court of the Southern District of California (A. B. 49) it cannot be disputed that the *res*, the subject matter of the action, is within the territorial jurisdiction of the court. Likewise all of the trespassing acts of the defendant-appellant Ammann took place within the boundaries of that district [R. 3]. The acts of said defendant-appellant undoubtedly caused a lien or cloud upon the property of the

association inasmuch as said defendant-appellant by his various fiats undertook to, and did, take over the bank accounts of the association and did deal with them as he saw fit, even going to the extent of withdrawing several million dollars from one bank and redepositing them in another bank of his own choosing [R. 387]. In addition to these acts, said defendant-appellant saw fit to, and did, purchase stock in the purported Federal Home Loan Bank of San Francisco, and did exchange the stock in the Federal Home Loan Bank of Los Angeles, belonging to the association, for additional stock in said Federal Home Loan Bank of San Francisco [R. 387]. He has likewise sold bonds of a total value of approximately six hundred fifty thousand dollars ($650,000.00) belonging to the association and has reinvested some of these funds in other bonds which he himself has seen fit to purchase [R. 394]. Said defendant-appellant also pledged securities of the Association to the purported Federal Home Loan Bank of San Francisco in the amount of seven million dollars ($7,000,000.00) as for his loans [R. 396].

Even were all of the foregoing not considered as sufficient indices to the claim of the defendant-appellant Ammann to the assets of the Association, it was such an act by him which was made an impelling cause for the filing of its cross-claim in interpleader by the trustee Title Service Company, when the defendant-appellant Ammann undertook to so far supersede the authority of the officers and directors of the Association as to peremptorily execute requests for reconveyances to the one hundred and seventy-four deeds of trust wherein the Home Investment Company was the trustor, and deliver the same to the Title Service Company, with his demand that it reconvey upon

the strength of his perempted authority [R. 247 and 251]. As is readily seen from the succession of events thereafter in the proceedings in intervention by the Home Investment Company, referred to and described, *supra* [R. 253, 254, 318, 319], the defendant-appellant Ammann undertook this exercising of his claimed authority prior to the payment to him of the funds necessary to pay off the promissory notes secured by the deeds of trust executed by said Home Investment Company. This is further evidenced by the delay by the Home Investment Company in procuring and depositing the sum of approximately eight hundred thousand dollars ($800,000.00) in payment of said promissory notes, which payment was made into the Registry of the District Court of the Southern District of California [original affidavit of Lloyd S. Whaley and order thereon, Tr. p. 542, designated but omitted in printing].

It is earnestly believed and urged that the foregoing evidence of the exercising of his claim of right and title to the assets of the Association by the defendant-appellant Ammann clearly brings the principal action within the provisions of Section 118 of Title 28 U. S. C. It is not believed that there can be any serious claim that the assets of the Association hereinbefore described did not constitute "property." Should there be any doubts on this score, the same are completely set at rest by the case of *Omaha National Bank v. Federal Reserve Bank*, 26 F. (2d) 884, wherein it was decided by the Circuit Court of Appeals that certificates of deposit were "property" within the meaning of this section. Certainly if mere certificates of deposit are considered to be property, the actual physical assets in money and securities owned by the Association and seized by the defendant-appellant

Ammann under the direction and fiat of his superior, the defendant-appellant Fahey, must, necessarily, be considered to be property.

Defendant-appellants apparently forgot that the action was *in rem* at the time their petition was filed in April of this year when they sought a writ of mandamus and/or prohibition, and/or injunction, for in Paragraphs 1, 2(a) the defendant-appellants make the following statement:

> "On May 27, 1946, appellees Mallonee, *et al.* (Shareholder Members Protective Committee) brought this action in the district court for the southern district of California. *They prayed for the return of the Association to the old management as well as for other relief.*"

So by their most recent move it is clear that the defendant-appellants *now consider the action to sound in rem.*

It is submitted that the complaint itself [R. 15] is the best authority to determine what the case is primarily about, for in the prayer of the bill of complaint the *first seven paragraphs all have to do with removing the defendant-appellants from the possession* of the shareholder members' *property*, that the defendant-appellants account for the same and that a judgment be entered declaring the rights, obligations and duties of the parties in respect to the property, and, pending the judgment, restraining the defendant-appellants here from merging, commingling, liquidating or otherwise hiding the assets of the Association from the true owners of same.

Section 118 of Title 28 U. S. C., contains a recitation of its own jurisdictional requirements. It is submitted that these have been met by the complaint herein:

(a) There are adverse claims beclouding the titles to many parcels of real property and extensive personal property located in the district in which the action is brought.

(b) One or more of the defendant-appellants are not inhabitants of the district.

(c) The plaintiff-appellees are trying to remove the clouds on the property described above.

(d) The court has made an order requiring the absent defendant-appellants to appear, and pursuant to said order, defendant-appellant Fahey has been served and has appeared in this case.

(e) The person in possession or in charge of the property to wit, the defendant-appellant Ammann, has been served with process.

Contention is made that under the rules normally applicable "suit was not properly brought against Fahey in the southern district of California and that court did not obtain jurisdiction over him. Judicial Code, Section 51, 28 U. S. C. 112; . . ." Perhaps counsel for defendant-appellants were unaware that Section 112 of Title 28 U. S. C. expressly makes exception to actions brought under Section 118 of the same title, and that Section 118 provides that service may be had upon absent defendants "wherever found."

The two cases most nearly in point are *Bede Shipping Co. v. N. Y. Trust Co.*, 54 F. (2d) 658, and *Spellman*

v. Sullivan, 43 F. (2d) 762, affirmed in 61 F. (2d) 787. Other cases in point in the same question are:

Walla Walla v. Walla Walla Water Co., 172 U. S. 1. (Tax cloud on personal property.)

Jellenik v. Huron Copper Mining Co., 177 U. S. 1 (1899). (Involved stock; dismissal was reversed.)

Slagle v. Spellman, 15 F. (2d) 292 (1926). (Section 57 of Judicial Code extends jurisdiction of the district court to include interest in personalty.)

Thompson v. Emmett Irrigation District (C. C. A. 9), 227 F. 560 (1915), (C. C. A. 9th). (Derivative suit on behalf of bond holders to remove cloud. Dismissal reversed.)

As may be seen from the cases cited above, all of the elements to jurisdiction are present. These are:

(a) Adversity of suit.

(b) Claim to, or cloud, on title to property.

(c) The requisite order for appearance served upon the defendant-appellant Fahey.

It is submitted that the court should also consider the convenience of parties and witnesses and the multiplicity of suits. The defendant-appellant Fahey is the only party not served in California. In addition to the formal plaintiffs and defendants there are better than a dozen cross-claimants in intervenor. There is also to be considered the convenience of the thousands of shareholder members and borrowers. Surely this is a proper case for Mohammet to go to the mountain. The practical aspects of such a situation were discussed in *First National Bank of Canton v. Williams*, 252 U. S. 504, in which case this

court held the district court in Pennsylvania had jurisdiction.

Even were the primary jurisdiction of the court predicated on Section 118 of Title 28 U. S. C. insufficient, which is not conceded, the jurisdiction of the District Court for the Southern District of California, is definitely tied down by the provisions of the interpleader Statute, Title 28 U. S. C. 41 (26) and by Rule 22 of the Federal Rules of Civil Procedure. Both Statute and the Rule are merely codifications of the old equity principle and rule of long standing which permit the adjudication by a court of competent jurisdiction of the rights of adverse claimants to property held by a disinterested third party.

Immediately upon learning of the audacious act of the defendant-appellant Ammann in presuming to demand reconveyance of one hundred and seventy-four (174) deeds of trust, the plaintiffs joined the defendant-appellee Title Service Company as a party to the action by causing to be served upon it a copy of the complaint together with an alias summons. Contemporaneously therewith, the officers and directors of the Association advised the Title Service Company that if it should comply with the demands made by the defendant-appellant Ammann for a reconveyance, that it, the Association, would hold said Title Service Company liable for any monetary damages which might ensue thereby. It is understood that even up to this time that the defendant-appellant has never formally advised the appellee Title Service Company, of his claimed appointment or his purported authority. It is respectfully submitted that immediately upon the filing of this cross-claim in interpleader and its bill in the na-

ture of interpleader by the appellee Title Service Company that the jurisdiction of the court below became absolute, pursuant to the provisions of the interpleader statute, *supra*. All of the necessary elements for the interpleader are set forth in that statute and interpreted in the case of *Railway Express Agency, Inc., v. Jones*, 100 F. (2d) 301, and confirm that the jurisdiction of the court below became absolute and its jurisdiction became nationwide. The elements as set forth in the Railway Express case are: (a) a verified bill, (b) the having in possession by the interpleader and the deposit of property in excess of five hundred dollars ($500.00), (c) two or more adverse claimants, citizens of different states claiming to be entitled to such money or property, and (d) the deposit of such property with the Registry of the Court.

It is respectfully submitted that all of these elements existed in the case below, as evidenced by the verified cross-claim filed by the Title Service Company [R. 30] and the deposit by it of the one hundred seventy-four (174) promissory notes, trust deeds and requests for reconveyance [R. 35], the existence of two or more adverse claimants, citizens of different states (the Association a resident of California on the one hand, and the defendant-appellants Fahey and Aminann, residents of Massachusetts and Maryland, respectively, on the other hand [R. 261, 304]) and the actual deposit of the securities in the Registry of the Court. [R. 35.]

The interpleader statute above cited, like Section 118, *supra*, also operates *in rem*. It was not necessary that the defendant-appellant Fahey appear in the action in order to give the court absolute jurisdiction to decide the

issues and to remove the claims of the defendants and appellants Fahey and Ammann. Under the provisions of Section 118 and upon the making by the court below of the order for service upon the defendant-appellant Fahey and the service there by upon him, together with the services upon the Attorney General and the United States attorney for the Southern District of California [R. 51], the jurisdiction of the court below was acquired beyond any question of a doubt. It is true that such situation left the defendant-appellant Fahey with the necessity of electing one of two unpleasant alternatives. The first of these was to sit idly by and allow the court to make its judgment, which very probably would have been adverse to him. The other horn of the dilemma was to submit himself to the jurisdiction of the court below. An examination of the entire record shows to what lengths the defendant-appellant Fahey has gone to avoid submitting himself to such jurisdiction and he is even now in this distinguished tribunal seeking to show by devious means that none of the courts of the United States have or had jurisdiction to decide this matter.

That the defendant-appellant Fahey, as the superior of the defendant-appellant Ammann, was not an indispensable party is definitely established by the case of *Colorado v. Toll*, 268 U. S. 228, wherein this court reversed the District Court which had dismissed an action against the Secretary of the Interior upon the theory that he was an indispensable party in an action of the Sovereign State of Colorado to set aside regulations as to speed limits made by the superintendent of a national park, which was located within the physical confines of the State of Colorado. In making such reversal this court held in no un-

certain terms that although the Secretary of the Interior would have been a desirable party, that he was neither a necessary nor an indispensable party in carrying out an act of his subordinate, which was beyond the power and right of such subordinate to make. So, likewise, in the case of *Jones (Postmaster) v. Schachelton Inhaler Company*, 132 F. (2d) 116; the Circuit Court of Appeals held that the Postmaster General was neither a necessary nor an indispensable party in an action to set aside a fraud order which would have prohibited the plaintiff-appellee from using the United States mails. Most certainly, if the Act of Congress, under which the defendant-appellant Fahey made his purported appointment of the defendant-appellant Ammann as conservator, was void as has been hereinbefore demonstrated, the defendant-appellant Fahey was neither a necesary nor an indispensable party to a declaration of the unconstitutionality of that Act. The enjoining of the merger of the assets of the Association and the enjoining of the administrative hearing necessarily followed from an adjudication of the unconstitutionality of Section 5(d) of the Home Owners Loan Act, and such enjoining was well within the provisions of the court below under the provision of subdivision (c) of Section 41 (26), U. S. C., wherein it is provided that in any proceeding interpleader or in the nature of interpleader, that the District Court shall have the power to enjoin claimants from instituting or prosecuting any proceedings against the subject matter of their respective claims and that such jurisdiction is nationwide. This right was borne out in the case of *Trinces v. Sunshine Mining Company*, 99 F. (2d) 651, which was affirmed by this court in 308 U. S. 66. In addition to being the authority and precedent for the principle above set forth that

case likewise adjudicated the fact, as set forth in subdivision (e) of the interpleader statute that it matters not that more than one claimant to the interpleader fund or property may be residents of the same state, but that it is sufficient if one or more of the adverse claimants are non-residents of that state.

Even were the law on the foregoing not sufficient to confer an absolute jurisdiction on the court below, the jurisdiction of that court is further bolstered by the filing of the cross-claim in interpleader of the defendant-appellant Robert H. Wallis wherein he physically deposited in the Registry of the court a cashier's check, wherein he was made the payee in the face amount of fifty thousand dollars ($50,000.00) and to which there are adverse claimants in the persons of the defendant-appellee Wallis and the Association, both residents of California, on the one hand, and the defendant-appellants Fahey and Amiann, residents of Massachusetts and Maryland, respectively, on the other hand.

In view of all of the foregoing it is most respectfully submitted that the jurisdiction of the court below was absolute on the three grounds: (1) the provisions of Section 118, Title 28, U. S. C., under which the formal action was brought and; (2) under the provisions of the Interpleader Act, Title 28, Section 41 (26), Rule 22, Federal Rules of Civil Procedure; and (3) the long line of equity decisions giving the courts of equity absolute jurisdiction in interpleader cases.

C.

Section 5 (d) of the Federal Home Owners Loan Act of 1933 Is Severable From the Balance of the Act.

The Act itself (June 13, 1933, c. 64, Sec. 1, 48 Stat. 128, Title 12 U. S. C. Sec. 1461 *et seq.*) provides for its own severability. Section 1468 of Title 12 U. S. C. (Section 9 of the Act), provides as follows:

> "If any provisions of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

Subdivision (i) of Section 5 (Section 1464, Subd. (i), Title 12 U. S. C.), has already been declared to be unconstitutional by this Court in the case of *Hopkins Federal Savings & Loan v. Cleary*, 296 U. S. 315. In that case this Court held that insofar as this Act permits conversion of state associations into federal associations in contravention of the laws of the States of their creation it violates the Tenth Amendment to the Constitution.

The defendant-appellants would have the court believe that the affirming of the decision of the court below would destroy the government's power to enforce its supervisory authority (A. B. 45).

No argument in support of defendant-appellants' contention has been made and it is not understood how the contention could be supported. The industry has functioned since the *Hopkins* case decision was rendered in 1935, without the presence of subsection (i) of Section 5. And it is submitted that without subsection (d),

which has been found by the three-judge statutory court to be unconstitutional, that the industry can and, no doubt, will continue to function satisfactorily.

The doors of all of the federal courts, as well as the state courts, are open to the supervising administrative body, and, in case situations develop which can be shown by appropriate examination or other admissible evidence of improprieties in the management and operation of federal savings and loan associations, upon appropriate pleadings the courts can and, no doubt, would appoint receivers and conservators.

Of course, an actual showing of insolvency, threatened insolvency, or improprieties of management would, no doubt, have to be presented to satisfy a federal court and to obtain its intercession. A bald statement of conclusions, unsupported by evidentiary facts, would probably be insufficient.

This, no doubt, is the reason the defendant-appellants Ammann and Fahey have so assiduously avoided in the instant proceedings any application to the courts, and why they are even now endeavoring to deprive this court, as well as all other courts of the land, of an opportunity to hear and determine even the unconstitutionality of an act of Congress.

It is not believed that the elimination of this section will have any adverse affect upon the savings and loan industry, but on the contrary the confidence of the investing public in such associations and the sense of security which will be given to the management of the associations will be greatly enhanced and this field of activity favored by the government and prosper, as the result of such a decision. Whereas, if the decision in the Court below

is reversed the entire industry will be forced to operate under the constant fear that a disaster, such as that which befell the association here, will happen to them also should they incur the wrath or personal dislike of dictator Fahey.

Conclusion.

The plaintiffs-appellees most urgently call upon this Court for protection against the ruthless despotism of the defendant-appellant Fahey.

The need for this Court to rise and protect the weak against the strong was most ably expressed in the opinion in the case of *Chambers v. Florida*, 309 U. S. 227 at 240-241 as follows:

> "The Constitution proscribes such lawless means irrespective of the end. And this argument flouts the basic principle that all people must stand on an equality before the bar of justice in every American Court. Today, as in ages past, we are not without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid of tyranny. Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement. Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death. No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and

inscribed for the benefit of every human being subject to our Constitution—of whatever race, creed or persuasion."

Therefore, it is most respectfully urged that this Court has no alternative other than to affirm the judgment of the court below, in its entirety, and continue the long line of uninterrupted affirmations of the basic principle of democracy, commencing with the case of *Brig Aurora Burnside v. U. S.*, 7 Cranch 382 (1813), "that this is a government of laws and not of men" and withheld from a despotic administrator the right to usurp the powers of the Congress of the United States in making his own laws, and to uphold the principle that there shall be no deprivation of property or the rights and liberties of the people, including the 16,000 Shareholder Members of the Long Beach Federal Savings and Loan Association, without due process of law. Such affirmation will again assure the populace who make up our great democracy that no deviation from democracy as they know it shall be allowed to take place, that no administrative officer shall ever lead the country away from its precepts of democracy and that dictation or totalitarianism shall not be allowed to exist.

Respectfully submitted,

WYCKOFF WESTOVER,
Attorney for Plaintiffs-Appellees.

DANIEL W. O'DONOHUE, JR.,
Associate Counsel.

APPENDIX A.

National Industrial Recovery Act, Volume 48, U. S. Statutes at Large, Part 1.

This Act was held partially unconstitutional in the case of Panama Refining Co. v. Ryan, 293 U. S. 388 (1935), and the balance of the Act was held unconstitutional in A. L. A. Schechter Poultry Co. v. U. S., 295 U. S. 495 (May, 1935).

DECLARATION OF POLICY; SECTION 1.

Section 1:

"A National emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacities of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

Section 3(d):

"Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of the section."

Section 9(c):

"The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both."

APPENDIX B.

Agricultural Adjustment Act
Declaration of Emergency and Policy
(Portions)

"Section 601. Declaration of Emergency.—That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce, in such commodities, and render imperative the immediate enactment of title I of the Act. (May 12, 1933, c. 25, Title I, Sec. 1, 48 Stat. 31.).

"602. Declaration of policy; establishment of base periods for prices. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this act, to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will re-establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all

commodities for which the base period is the pre-war period, August, 1909, to July, 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the post-war period, August 1919-July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section. (May 12, 1933, c. 25, Sec. 2, 48 Stat. 32; Aug. 24, 1935, c. 641, Title I, Sec. 1(a, b), 49 Stat. 750.)

"608b. Marketing agreements.—In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign com-

merce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the anti-trust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 (Code, Title 15, Sec. 605) of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements. (May 12, 1933, c. 25, Title I, Sec. 8b; added Aug. 24, 1935, c. 641, Title I, Sec. 4, 49 Stat. 753.)

"608c. Orders.—(1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as 'handlers'. Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

(2) Commodities to which applicable.—Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products there-

of (except products of naval stores), or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables other than asparagus, for canning), soybeans and naval stores as included in the Naval Stores Act (7:91 to 99) and stands established thereunder (including refined or partially refined oleoresin).

(3) Notice and hearing.—Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this chapter with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

(4) Finding and issuance of order.—After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this chapter with respect to such commodity."

APPENDIX C.

National Bituminous Coal Commission Act of 1937 (50 U. S. Statutes at Large, Part 1, page 72).

Note: This is extracts from the rewritten National Bituminous Coal Commission Act the first of which, to wit, the Bituminous Coal Conservation Act of 1935 (49 Statutes 991, Chapter 824) was held unconstitutional by decision of this court in the case of *Carter v. Carter Coal Co.*, 298 U. S. 238 (1936).

STATEMENT OF POLICY.

"That regulation of the sale and distribution in interstate commerce of bituminous coal is imperative for the protection of such commerce; that there exist practices and methods of distribution and marketing of such coal that waste the coal resources of the Nation and disorganize, burden, and obstruct interstate commerce in bituminous coal, with the result that regulation of the prices thereof and of unfair methods of competition therein is necessary to promote interstate commerce in bituminous coal and to remove burdens and obstructions therefrom."

Section 2(a):

"There is hereby established in the Department of the Interior a National Bituminous Coal Commission (herein referred to as Commission), which shall be composed of seven members appointed by the President, by and with the advice and consent of the Senate, for a term of four years . . ."

Such Commission shall have the power to make and promulgate all reasonable rules and regulations for carrying out the provisions of this Act and shall annually

make full report of its activities to the Secretary of the Interior for transmission to Congress. A majority of the Commission shall constitute a quorum for the transaction of business, and a vacancy in the Commission shall not impair the right of the remaining members to exercise all the power of the Commission. No order which is subject to judicial review under section 6, and no rule or regulation which has the force and effect of law, shall be made or prescribed by the Commission, unless it has given reasonable public notice of a hearing, and unless it has afforded to interested parties an opportunity to be heard, and unless it has made findings of fact. Such findings, if supported by substantial evidence shall be conclusive upon review thereof by any court of the United States. . . ."

Section 6(a), page 85:

"All rules, regulations, determinations, and promulgations of any district board shall be subject to review by the Commission upon appeal by any producer and upon just cause shown shall be amenable to the order of the Commission; and appeal to the Commission shall be a matter of right in all cases to every producer and to all parties in interest, including any State or any political subdivision thereof."

Section 6(b), page 85:

"Any person aggrieved by an order issued by the Commission in a proceeding to which such person is a party may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District

of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. . . . ."

Section 6(c), page 86:

"(c) If any code member fails or neglects to obey any order of the Commission while the same is still in effect, the Commission in its discretion may apply to the Circuit Court of Appeals of the United States within any circuit where such code member resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such code member and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript *a cedree* affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

"The Commission may modify its findings as to the facts or make new findings by reason of the additional evidence so taken, and it shall file such modified or new findings, which if supported by substantial evidence shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, Secs. 346 and 347).

"(d) The jurisdiction of the Circuit Court of Appeals of the United States or the United States Court of Appeals for the District of Columbia, as the case may be, to enforce, set aside, or modify orders of the Commission shall be exclusive."

Sec. 8. (a):

"The members of the Commission are authorized to administer oaths to witnesses appearing before the Commission and to authorize the taking of depositions in any proceedings; and, for the purpose of conducting its investigations, said Commission shall have full power to issue subpoenas and subpoenas *duces tecum*, which shall be as nearly as may be in the form of supoenas issued by District Courts of the United States. In case of contumacy by or refusal to obey a subpoena issued to any person, the Commission may invoke the aid of any court

of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witness and the production of books, papers, correspondence, memoranda, and other records. Upon the filing of the application for such aid with the clerk of the court the court shall, either in term time or vacation, forthwith enter an order or record, requiring such person to appear before such court at a time stated in the order not more than ten days from the entry of the order (unless for good cause shown such time is extended), and show cause why he should not be required to obey such subpoena, and upon his failure to show cause it shall be the duty of the court to order such witness to appear before the said Commission and give such testimony or produce such evidence as may be lawfully required by said Commission. The District Court, either in term time or vacation, shall have full power to punish for contempt as in other cases of refusal to obey the process and order of such court. Witnesses summoned before the Commission or when depositions are taken upon order of the Commission, shall be paid the same fees as are paid for like services in courts of the United States.

(b) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by

it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

APPENDIX D.

Building and Loan Association Act, State of California. Deering's General Law Act 986, Section 13.12 (The preceding Section 13.11 is quoted in appellants brief p. 122 of Appendix C-3.

Section 13.12. Court Appellant by Association Aggrieved.

"Whenever any association of whose property, business and assets the commissioner has taken possession, as aforesaid, deems itself aggrieved thereby, it may at any time within thirty days after such taking possession apply to the superior court of the county in which the principal office of such association is located, to enjoin further proceedings; and said court after citing the commissioner to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss such application or enjoin the commissioner from further proceedings and direct him to surrender such business, property and assets to such association. An appeal from such judgment enjoining the commissioner from further proceedings and directing him to surrender such business, property and assets to such association shall not operate as a stay thereof, unless the trial court in its discretion shall so order and no bond need be given if such appeal be taken by the commissioner; but if such judgment dismisses such application an appeal therefrom shall not operate as a stay thereof but the court render-

ing such judgment may, in its discretion, enjoin the commissioner, pending the appeal, from further proceedings and direct him, pending the appeal, to surrender such business, property and assets to such association, provided a bond shall be given as required by Section 943 of the Code of Civil Procedure."

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 687.

LOUIS H. FAHEY and A. A. AMMANN, Individually, and Respectively as Federal Home Loan Bank Commissioner, and Conservator for the Long Beach Federal Savings and Loan Association,

Appellants,

vs.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, *et al.*,

Appellees.

On Appeal From the District Court of the United States for the Southern District of California.

Brief for Appellee Long Beach Federal Savings and Loan Association Defendant and Cross-Claimant Against Appellants Fahey and Ammann, and also Third Party Plaintiff vs. Federal Home Loan Banks of San Francisco, Los Angeles and Portland, Defendants Below.

CHARLES K. CHAPMAN,
22 Ocean Center Building, Long Beach 2,
Attorney for Appellee, Cross-Claimant and Third Party Plaintiff Long Beach Federal Savings and Loan Association.

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IN THE

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Appellees.

Brief for Appellee Long Beach Federal Savings and Loan Association Defendant and Cross-Claimant Against Appellants Fahey and Ammann, and also Third Party Plaintiff vs. Federal Home Loan Banks of San Francisco, Los Angeles and Portland, Defendants Below.

Opinion Below.

The opinion of the District Court of the United States for the Southern District of California [R. 374-378] was reproduced in full in the Brief for Appellees Shareholder Members Protective Committee, Mallonee, Newhouse and Bucklin, and is also reported in 58 Fed. Supp. 418.

Questions Presented.

1. Whether a completely solvent Federal Savings and Loan Association, with surplus in excess of $1,300,000 and which has grown in 12 years from $7500 to $26,000,000 exists only at the pleasure and whim of the Federal Home Loan Bank Commissioner.

2. Whether without express authority from Congress so to do, the Federal Home Loan Bank Commissioner can set up his own administrative procedure, wherein he makes his own laws of pleading, evidence, procedure, and judgment and thereby oust the United States Courts of the jurisdiction given them by the Constitution and the Congress of the United States.

3. Whether the only hearing ever accorded such solvent seized Federal Savings and Loan Association is to be decided by the Federal Home Loan Bank Commissioner, who has publicly announced, prior to such hearnig, that he has decided the case against the said association and in favor of himself.

4. Whether said Federal Home Loan Bank Commissioner, without notice or hearing and without the consent of any of the shareholders, members or depositors whose savings and homes are involved, can merge Federal Savings and Loan Associations into other institutions, thus changing the obligations and benefits of such depositors and home owners without their knowledge or consent

5. Whether a United States District Court within whose jurisdiction are situated the 8000 homes, title to which is involved and within whose jurisdiction are physically located the $26,000,000 in assets and securities has jurisdiction under Title 28, Section 118 and Section 41, Subdivision 26, U. S. C., to decide the constitutionality

of the Acts of Congress under which appellants claim to have seized possession of, and title to, said assets and securities, and entangled the title to said homes.

6. Whether upon determination of the question of constitutionality adversely to defendants (appellants), the District Court may order the property seized by them under the unconstitutional statutes restored to those from whom the defendants confiscated it or must leave the trespassers under the unconstitutional statute in possession until final determination of every ultimate detail of the litigation.

7. Whether Section 5(d) of the HOLC Act of 1933 is unconstitutional

A. Because it denies due process of law,

B. Because it improperly delegates legislative power, and is, therefore, unconstitutional on one or both of grounds A and B.

Statement.

This action arises from the seizure by appellants Fahey and Ammann of two completely solvent and liquid financial institutions.

First. The Federal Home Loan Bank of Los Angeles with assets of $43,000,000 and a surplus of $1,900,000 was seized, liquidated and merged all in one day on the 29th day of March, 1946. [R. 293-295.]

Second. Long Beach Federal Savings and Loan Association with assets of $26,000,000 and a surplus of $1,300,000 which was seized on May 20, 1946. [R. 5.] Its similar liquidation and merger were prevented by a restraining order issued on application of plaintiffs by the United States District Court in this action. [R. 27.]

Both seizures were made without notice, without hearing and without cause. [R. 1-17.]

Both seizures are inter-related. Seizure of the Long Beach Federal being caused by resistance made to the seizure and dissolution of the Los Angeles Bank. [R. 7-9.]

The Long Beach Federal Savings and Loan Association was organized in 1934 with an initial capital of $7500. Its officers and board of directors were practically identical from the time of its organization to the time of its seizure by defendants Fahey and Ammann on May 20, 1946. [R. 207, 477.]

In 12 years it has grown from an initial capital of $7500 to in excess of $26,000,000. [R. 477.] In the last month before its seizure it had increased in shareholder member deposits approximately $537,956.15. [P. 5 Supp. Aff. MacArthur Supreme Ct.] From the date of its organization to the date of its seizure it had uniformly and consistently paid dividends every year of from 2½ to 4% per annum. [R. 284.] Its solvency had never at any time been in question and at the time of its seizure it had a surplus of approximately $1,300,000. [R. 285.]

It, like all other Federal Savings and Loan Associations, was required by law to be a member of a Federal Home Loan Bank. When it ceased to have such membership, it also ceased to exist as a Federal Savings and Loan Association. [R. 104.] The Long Beach Federal Savings and Loan Association during March of 1946 owned approximately 3400 shares of stock in the Federal Home Loan Bank of Los Angeles which stock had a value of approximately $340,000 to $360,000.

T. A. Gregory, who had been President of the Long Beach Federal Savings and Loan Association since its organization in 1934, was one of the directors of the Federal Home Loan Bank of Los Angeles. The Federal Home Loan Bank of Los Angeles had about $43,000,000 in assets and was also unquestionably solvent and had a surplus of about $1,900,000. [R. 361.] M. M. Hurford had been President of the Federal Home Loan Bank of Los Angeles for ten years and Charles E. Berry had been Vice-President of said bank for 8½ years (since 6/15/37). On November 23, 1944, President Hurford died. [R. 355.] Vice-President Berry was elected as President of the Federal Home Loan Bank of Los Angeles on two different occasions by the board of directors of the said bank. [R. 356.] James Twohy, Deputy Governor of the Federal Home Loan Bank System under Defendant Fahey, was ambitious to become President of the Los Angeles Bank. [P. 5, Spec. Cong. Comm. Rep. Ex. "D" Mallonee Aff. Supreme Ct.] Defendant Fahey, as Federal Home Loan Bank Commissioner, refused to confirm Mr. Berry's elections, and an acrimonious controversy arose between Fahey and the Board of Directors of the Los Angeles Bank as to who should be the President of the bank. T. A. Gregory, President of the Long Beach Federal Savings and Loan Association and a director of the Federal Home Loan Bank of Los Angeles, took a prominent part in this controversy. [Pp. 1-3, Spec. Cong. Comm. Rep. Ex. "D" Mallonee Aff. Supreme Ct.] On March 29, 1946, without notice, without hearing, without cause the $43,000,000 solvent, Federal Home Loan Bank of Los Angeles, with a surplus of approximately $1,941,330.49 was instantaneously merged, liquidated and dis-

solved by defendant Fahey through Federal Home Loan Bank Administration Orders No. 5084 and 5082. [R. 349-352.] By these orders the Los Angeles Bank was merged into the Federal Home Loan Bank of Portland and the new institution resulting from said mergers was called the Federal Home Loan Bank of San Francisco.

By this purported merger and liquidation, the stockholders in the Los Angeles Bank became involuntary stockholders in a new institution with unknown assets, unknown liabilities and a totally strange set of officers and directors; said new institution being located at San Francisco, California, some 500 miles from Los Angeles. The stockholders of the merged, liquidated and dissolved Los Angeles Bank formed a committee, solicited funds, and were about to file action in court to question the instantaneous, summary liquidation, merger and dissolution, of the Los Angeles Bank. [P. 3, Spec. Cong. Comm. Rep. Ex. "D" Mallonee Aff. Supreme Ct.] The Congress of the United States became interested in this treatment of the Los Angeles Bank and scheduled a hearing before the Special Committee of the House of Representatives to Investigate Acts of Executive Agencies Beyond the Scope of Their Authority. [P. 2, Spec. Cong. Comm. Rep. Ex. "D" Mallonee Aff. Supreme Ct.] Meetings of the stockholders of the liquidated and merged Los Angeles Bank were held, attorneys were retained, and a Complaint to be filed in the Federal Courts against the defendant Fahey calling him to account for his actions in the confiscation of the Los Angeles Bank was prepared. [R. 287.] Word of these actions reached the ears of those who had seized the Los Angeles Bank. T. A. Gregory, President of the Long Beach Federal

Savings and Loan Association, realized that his institution was in grave danger of suffering the same fate as that suffered by the Los Angeles Bank. [P. 3, Spec. Cong. Comm. Rep. Ex. "D" Mallonee Aff. Supreme Ct.] Weeks had passed since the seizure of the Los Angeles Bank, and its stockholders were having trouble raising funds to commence the litigation essential for its protection. He, therefore, suggested to the directors of the Long Beach Association the taking of measures to protect the Long Beach Association before the defendants Fahey and Ammann also struck at it. On May 8, 1946, just twelve days before the Long Beach Federal Savings and Loan Association was actually seized a resolution was adopted in the following language:

> "Whereas there have been indications that retaliation against this association by those purported to be representing the Federal supervising authorities because the representatives of this association, duly elected as a director of the Federal Home Loan Bank of Los Angeles, did not disregard the legal rights and best interests of said bank and submit to the dictation of the Federal Home Loan Bank Commissioner; and
>
> Whereas such retaliations are unwarranted and violate the principles of our democratic government and are detrimental to the best interest of this association: Now, therefore, be it
>
> Resolved, that the officers of this association be and they are hereby authorized to employ legal counsel to conduct appropriate legal proceedings to restrain said Federal Home Loan Bank Commissioner or his deputies from interfering with the normal and proper conduct of this association's affairs.

The sum of $100,000 is hereby appropriated and authorized to be expended for that purpose." [P. 21 Spec. Cong. Comm. Rep. Ex. "D" Mallonee Aff. Supreme Ct.]

On May 20, 1946, the anticipations of the directors of the Long Beach Federal Savings and Loan Association proved to be correct. The defendant Ammann with numerous deputies, physically invaded the premises of the *Long Beach* Federal Savings and Loan Association at Long Beach, California, and announced that they had taken possession of it, its business and assets. [R. 70-73.] The officers demanded written authority for such action and were told verbally that an order had been entered in Washington, D.C., a few hours before appointing the defendant A. V. Ammann as conservator and directing that he take possession of the Association. Asked for a copy of this order, the officers were refused such copy. Whereupon, the officers declined to surrender possession. The defendant Ammann then produced a one-page, typewritten docum[redacted] bearing no signature and presented it as his authority to take possession of the $26,000,000 institution. Upon defendant Ammann's attention being directed to the lack of certification of the order, he proceeded to sign his own name to his own order appointing himself as conservator, and, thereupon, demanded immediate surrender of all assets, cash and securities to him. [R. 70-74.] When the officers hesitated to comply with his demands, they were threatened by him with criminal prosecution under Federal Statutes. [R. 70-74.] By this time deputy conservators, deputy examiners and other subordinates of the defendants Fahey and Ammann had stationed themselves at the vaults, at

each of the cash drawers and all of the other places where securities and valuables were kept. The officers demanded a written receipt for the $26,000,000 in securities, cash, bearer bonds and other assets belonging to said Association as well as several million dollars worth of additional securities held by said Association for collection for certain of its customers. All such demands were refused. [R. 71-75.] The officers and others present at the time of the seizures requested from Ammann a statement of the causes for which the institution was being seized. According to disinterested witnesses Ammann stated:

> "The Association has gross assets of $26,000,000, $22,000,000 of which are savings. It is a sound, solvent, going institution."

Affiant then asked the said A. V. Ammann, "Then why are you here?" And he, said A. V. Ammann replied, "If it gets in the papers we are here, it will create a run and tear down the institution, that is why we are here."

Affiant then asked, "Do you realize what you have said?"

Said A. V. Ammann then repeated this former statement. . . . [R. 72-73.] Ammann denies having made such statements. Within a few hours after the seizure a run of withdrawals of shareholder member deposits was under way. For several days the runs were a million or more dollars per day. More than $10,000,000, almost one-half of the total deposits, were thus withdrawn in the run. [P. 1 L. D. White Aff. in Supreme Ct.] On May 27, 1946, a shareholders' committee filed their complaint in the United States District Court for

the Southern District of California, on behalf of themselves and all other shareholders of said association as a class action. [R. 1.] Honorable Peirson M. Hall, United States District Judge, on application of the plaintiff Shareholders' Committee, issued a Temporary Restraining Order restraining the defendants Fahey and Ammann from merging or re-organizing the Long Beach Federal Savings and Loan Association with any other institution pending the action of the court. [R. 27.] Proxies ratifying the action taken by the Shareholders' Committee and authorizing them to represent individual shareholders were obtained from approximately 56% of the shareholders. [P. 1 Mallonee Aff. Supreme Ct.]

On June 12, 13 and 14, the Select Committee to Investigate Executive Agencies held its hearings at Washington, D. C. Among the witnesses testifying before said committee were the defendants Fahey and Ammann, President T. A. Gregory of Long Beach Federal Savings and Loan Association and numerous others. On July 25, 1946, the Congressional Committee made its report. [P. 3 Spec. Cong. Comm. Rep. Ex. "D" Mallonee Aff. Supreme Ct.]

Being unable to ascertain from the seizure order No. 5254, [R. 75, 85, 219] what, if any, were the charges against said Association for which it had been seized, the officers and directors on May 24, 1946, requested of the defendants Fahey and Ammann a more definite statement of such charges. [R. 86.] They also requested a hearing of defendants Fahey and Ammann. Both such requests were prior to the hearing before the Congressional Investigating Committee (June 12th). After the testimony of defendant Fahey and his deputy Lee, Gov-

ernor of Federal Home Loan Bank Administration, that the matters to be determined at the hearing had already been decided in advance by both Lee (he was governor of the Federal Home Loan Bank System) and Fahey.

Lee said:

> "Mr. Lee: 'I don't think Mr. Gregory can ever get it back from that institution' (it being the Long Beach Association.) Mr. Jennings (one of Congressional Committee): 'You have destroyed it.'"

Mr. Lee: "That isn't his institution." . . . [R. 110, also R. 105.] The shareholders, officers, and directors of the seized Long Beach Federal Savings and Loan Association then realized the futility of such hearing and the impossibility of obtaining justice at such hearing. The shareholders had invoked the protection of the Federal Courts, and it became apparent that any hearing conducted by defendants Fahey and Ammann had not only been decided in advance by them but would interfere with and trespass upon the province of the Federal Courts to determine all matters of the litigation then pending in such courts. [R. 244.] In addition appellant Fahey had stated under oath before the Congressional Investigating Committee as follows:

> "Suit has been entered in the Federal Courts in an effort to gain control of this institution . . . *It is assumed that the courts will determine the justification for our action.* [R. 105.] (Emphasis added.)

This led the Shareholders Committee (as well as the Congressional Investigating Committee) to believe that defendants Fahey and Ammann would present what charges they had, to the impartial United States District

Courts for decision. Actually, however, the reverse occurred, Fahey and Ammann imposed every technical obstruction and dilatory pleading, Motions to Dismiss, etc., but never submitted their charges to the court. Temporary Restraining Orders were applied for the Shareholder's Committee and obtained from Honorable Peirson M. Hall, United States District Judge for the Southern District of California, Restraining the defendants Fahey and Ammann from holding their so-called administrative hearing and acting as judges for themselves on the issues which they had already stated under oath before the Congressional Investigating Committee that they had decided in favor of themselves and against said Association and its shareholders. [R. 244.]

Among the assets seized by defendants Fahey and Ammann and belonging to the Long Beach Federal Savings and Loan Association were approximately 8000 notes and deeds of trust with a face value of approximately $12,000,000, with an average balance of approximately $1500 each secured by conveyances in trust of the title to approximately 8000 homes situated in Los Angeles County, California which conveyance was to defendant Title Service Company, a California corporation. All of the notes were payable at the office of the Association at Long Beach, California. All of the borrowers were residents of, Los Angeles County, California. [R. 198-199.]

The defendant Ammann presented 174 of these notes together with the deeds of trust securing the same with an approximate face value of about $800,000 to defendant Title Service Company, the trustee named in said deeds of trust together with defendant Ammann's request. That the legal title to the 174 pieces of real property conveyed

by said deeds of trust to Title Service Company be reconveyed by said Title Service Company to the borrowers. [R. 34.] Title Service Company was notified by the officers and directors of the said Long Beach Federal Savings and Loan Association that a Shareholders' Committee representing the shareholders of said Association had filed action in the United States District Courts challenging the authority of defendant Ammann to transfer the assets of the Long Beach Federal Savings and Loan Association and that said officers and board of directors on behalf of said shareholders would hold defendant Title Service Company individually liable for any breach of its duty as trustee and from any loss resulting therefrom. [Part VII, R. 35.]

Plaintiffs in this action, the Shareholders' Committee, caused a copy of the Summons and Complaint to be served upon defendant Title Service Company, and defendant Title Service Company thereupon filed its answer and Cross-claim in Interpleader and in the Nature of Interpleader depositing with the Clerk of the said United States District Court in this action, the 174 notes, 174 deeds of trust, 174 requests for reconveyance executed by defendant A. V. Ammann and also placed before the District Court for disposition the question of the balance of the 8000 notes and deeds of trust with the aggregate value of approximately $12,000,000 and asked that the District Court determine its duties as trustee under all of said 8000 deeds of trust and instruct it as to which, if any, requests for reconveyance it should honor and what disposition it should make of the legal title to the 8000 homes of the borrowers from said Long Beach Federal Savings and Loan Association whose title was

held in trust by defendant Title Service Company. [R. 30-39.]

The defendant Long Beach Federal Savings and Loan Association filed its Answer to said Interpleader and its Cross-Claim against the defendants Fahey and Ammann. [R. 187-191.] The Home Investment Company, owner of the legal title to the said 174 homes had conveyed the same by various contracts of sale to numerous individuals who were making payments upon said contracts of sale to said Home Investment Company and said contracts of sale and the loans and deeds of trust in favor of said Long Beach Federal Savings and Loan Association were being refinanced by the said Home Investment Company and the said various individuals purchasing the said 174 homes. [R. 247-253.] Until a valid reconveyance, issued upon a valid request for reconveyance, (which request was executed by those having legal authority to act for said Long Beach Federal Savings and Loan Association), could be obtained no clear title to the said 174 homes could be obtained by anyone. The Home Investment Company confronted with the situation of being unable to obtain a clear title even upon payment of the said $800,000 in full to either the said defendant A. V. Ammann or the defendant Long Beach Federal Savings and Loan Association and being in jeopardy of being compelled to pay the said $800,000 a second time or of being compelled to await the final determination of the litigation in this proceeding, petitioned for leave of the United States District Court to intervene as a party in this action and make the deposit into the Registry of the court of the said sum of $800,000 and asked the aid of this court in the clearing of its title to the said 174 homes described in said notes and deeds of trust then physically

deposited in the Registry of said court by the Interpleader of said defendant Title Service Company. [R. 178.] Said Petitions for Leave to Intervene were granted, said Home Investment Company became a party to this action and did deposit in the court said sum of $800,000. [R. 319-326.] Pursuant to order of the said court, the defendant Long Beach Federal Savings and Loan Association also executed and deposited in court its requests for reconveyance of the said 174 notes and deeds of trust and the said Title Service Company, pursuant to order of the court deposited with the Clerk of the Court its reconveyances of the legal titles to the 174 homes situated in Los Angeles County, California, and by order of the court the said reconveyances were delivered to the Intervenor, Home Investment Company, which thereby obtained a clear title to the said 174 homes, and the *said sum of $800,000 by order of said court was substituted for and took the place of the said notes and deeds of trust and remains in the custody of the court* pending the further order of the court upon determination of this action. [R. 319-326.]

Dozens of other home owners similarly situated have likewise become parties in intervention to this action, deposited their money in the Registry of the Court and upon deposit with the Clerk of the Court of their notes and deeds of trust by defendant Ammann, together with requests for reconveyance by defendant Ammann and by Long Beach Federal Savings and Loan Association upon deposit of a reconveyance pursuant to order of court by

defendant Title Service Company have also obtained, with the aid of the district court, clear titles to their said homes situated in Los Angeles County, California, said Interventions have taken place both before and after the pendency of the appeal to this Honorable Supreme Court of the United States.

Defendant Robert H. Wallis had been an attorney for defendant Long Beach Federal Savings and Loan Association for many years. Pursuant to the resolution of the board of directors dated May 8, 1946 (*infra*), he had received a cashier's check for $50,000 to be used by him in defense of said Association from the efforts of defendants Fahey and Ammann to seize it. The defendants Fahey and Ammann were claiming through newspaper releases and otherwise that the appropriation of said $100,000 and the issuance of said cashier's check for $50,000 were the principal reasons and justifications for their seizure of the said Long Beach Federal Savings and Loan Association and were claiming that said resolution and appropriation were illegal and improper, and that they, the said defendants Fahey and Ammann, were entitled to the said $50,000 check. [Part IX, R. 59.] Said plaintiffs Shareholders' Committee caused a copy of the Summons and Complaint to be served upon the said defendant Robert H. Wallis and thereupon he, on June 12, 1946, filed his Answer and Cross-Claim in Interpleader in this action and deposited said $50,000 cashier's check with the Clerk of this court and asked that the court determine who was entitled to the said $50,000 check and

that the court make proper allowances from said $50,000 check upon application made to the court by various attorneys seeking to protect said Association from the attacks of the defendant Fahey and Ammann. Said $50,000 check is still in the custody of the Clerk of the District Court in the Registry thereof uncashed and unused. [R. 54-63.]

On July 15, 1946, pursuant to Section 380(a) U. S. C. the Honorable William E. Orr, Justice of the United States Circuit Court of Appeals of the Ninth Circuit, and Honorable Peirson M. Hall, District Judge of the United States District Court for the Southern District of California and Honorable Dave Ling, District Judge of the United States District Court at Phoenix, State of Arizona, convened as a Three Judge Statutory Court and heard all of the matters then before the court including the Motions for Preliminary Injunction to Restrain Merger, for Preliminary Injunction to Restrain Administrative Hearing, Motions to Dismiss the Action by Fahey and Ammann, Motions by Ammann to Dismiss the Cross-Claims in Interpleader of Title Service Company and of Robert H. Wallis, *no motions to dismiss these cross-claims were presented to the three-judge court by defendant Fahey, despite the fact that he had been served with process thereon.*

The matter was argued at length by all counsel for two days and 407 pages of Points and Authorities were submitted at the request of the three judges. The case

was under submission approximately 7 weeks and on September 5, 1946, the three judges filed their unanimous opinion holding Section 5(d) of the Home Owners Loan Act unconstitutional. [R. 374.]

On September 19, 1946, defendant Ammann filed his Objections to the Proposed Findings and Conclusions of Law and Decree submitted by appellees to the three judge court pursuant to the opinion. [R. 424.] *He also submitted proposed findings of his own which were rejected by the three judges.* [R. 434.]

On September 21, 1946, appellee's filed their Answers to Ammann's Objections to the Proposed Decree. [R. 434, 464.]

On September 25, 1946, defendant Ammann filed his Request for a Stay of Execution of the judgment not yet made or entered by the three judges. [R. 465.] Appellees filed their Objections to the Request for Stay of Execution. [R. 468.]

September 30, 1946, the three judge court made and entered its Findings, Conclusions of Law and Decree, the subject of this appeal by defendants Fahey and Ammann, and at the same time denied the Stay of Execution requested by defendant Ammann. [R. 502.]

On the first day that the officers and directors of the Association attempted to resume business under the protection of the three judge decree, a few public spirited citizens of Long Beach deposited approximately $1,000,000 in new shareholder accounts in the Association. Im-

mediately upon learning that defendant Ammann was to be restored to possession and control of the assets and business of the Association, the $1,000,000 in new deposits was withdrawn. [Pp. 6, 20 Mallonee Aff. Supreme Ct.] The Marshall was in the process of executing this decree by placing the officers of the Long Beach Federal Saving and Loan Association in possession of the Association and its assets when, on October 1, 1946, defendants Fahey and Ammann, without notice to appellees, prior to petitioning for an appeal and prior to the allowance of any appeal, applied to the Honorable Justice Wiley B. Rutledge and secured from him an Order Staying the Execution of the Decree of the three judges (not yet appealed from) and directing the return of the Association by the officers and directors to the appellants. This Order was served upon the officers and directors of the Association during the night of October 2, and was complied with by them despite the fact that at the time of said service no appeal had yet been allowed or taken.

On November 9th, 1946, appellees filed their Motion to Vacate the Order Staying the Execution of the Decree of the Three Judge Statutory Court. Numerous affidavits and exhibits were filed by both parties and the matter argued before the Honorable Justice Wiley B. Rutledge and taken under submission by him. The Stay Order was allowed to remain in effect. References throughout this brief will be made to such affidavits and exhibits as well as to the printed record.

SUMMARY OF ARGUMENT.

I. Section 5-D, H. O. L. C. Act, is unconstitutional because it denies due process.

I-A. Due process is denied because Section 5-D does not require either notice or hearing before or after re-organization, consolidation, merger, liquidation, appointment of conservator or receiver or equitable re-adjustment of the capital structure of Federal Savings and Loan Associations. All of these drastic actions directly affecting the ownership of the homes and savings of the members of such associations are authorized by the Federal Home Loan Bank without any notice, without any hearing, or any protection to the home owners and savers involved.

I-B. Section 5-D denies due process because it does not provide any fair or impartial tribunal to hear or determine the re-organization, consolidation, merger, liquidation, appointment of a conservator or a receiver, or equitable re-adjustment of capital structure, authorized by said Section.

I-C. Section 5-D denies due process because the administrative hearing created solely by implication was actually without any authority either to hear or determine.

I-D. Section 5-D denies due process because it authorizes completely unrestricted merger of solvent into insolvent associations, without limit as to number, merged place or manner of merger, all without notice or hearing either before or after such mergers.

II. Section 5-D is unconstitutional because it attempts to delegate without restriction, authority to enact the laws of the United States. Under the authority of Section 5-D appellant Fahey has attempted to deny Federal Savings and Loan Associations recourse to the courts of the United States and has attempted to deny process of subpoena *duces tecum* of the United States Courts as to all records of the Federal Home Loan Bank Administration. Such delegation is unconstitutional.

III. The District Court of Three Judges or of one Judge had jurisdiction *in rem* of the $26,000,000 in real property and other assets physically within its boundaries, seized within such boundaries by appellant Ammann as a subordinate under the authority of appellant Fahey. Such jurisdiction arises from several sources.

III-A. One source of such jurisdiction is under Title 28, Section 118, U. S. C.

III-B. Another source of such jurisdiction arises in interpleader under Title 28, Section 41, subdivision 46, U. S. C., also under general equity interpleader powers, also under Rule 22, Rules of Civil Procedure for District Courts of the United States. Such interpleader jurisdiction sustains the action regardless of the jurisdiction under plaintiffs' original Complaint. Such interpleaders involve in excess of $12,000,000. of notes and deeds of trust conveying title to real property in Los Angeles County, California.

III-C. Fahey was not an indispensable party under any theory of the action. The District Court had jurisdiction over the $26,000,000 in assets and over Appel-

lant Ammann, both of which were physically within the boundaries of the District Court and as Section 5-D was unconstitutional, process against Fahey was unnecessary.

IV. The decree of the three-judge Court ordering restoration of possession to appellees immediately upon determination that Section 5-D is unconstitutional was proper. The unconstitutional law could not be changed or made constitutional by any pleadings of appellants Fahey or Ammann and appellants only authority for seizing, or to remain in possession, fell with the unconstitutional Section 5-D.

V. Neither plaintiffs, nor the association, were estopped to assert that Section 5-D is unconstitutional because estoppel is an equitable doctrine, used to prevent, not perpetrate an injustice. The association charter, itself, granted by the five-man board (predecessors of Fahey), now the one-man commissioner, estops Fahey from adopting regulations in conflict with the charter. The appointment of the conservator, without notice, was in conflict with the charter.

VI. The Third Party Complaint of the association against Federal Home Loan Banks of San Francisco, Los Angeles, and Portland, was proper because it involved the same facts and the same law and the same appellants Fahey and Ammann as the seizures of both, the Los Angeles Bank and the Long Beach Association, both issues being determined in the main action.

ARGUMENT.

I.

SECTION 5-D, H. O. L. C. ACT, IS UNCONSTITUTIONAL, BECAUSE IT DENIES DUE PROCESS.

I-A.

Section 5-D Denies Due Process Because It Does Not Require Either Notice or Hearing.

Appellees maintain that the Act is void as beyond the constitutional power of Congress because it denies due process in many ways. Before taking up in detail the numerous ways in which this act arbitrarily and dictatorially nullifys the Constitution of the United States, the general requirements of due process might advantageously be reviewed. Due process requires that the protection of "due process of law" be guaranteed BY THE ENACTMENT ITSELF. A matter so vital to the liberty and freedom of the nation does not rest on the mere whim or caprice of the official or officer adopting the regulations or enforcing the Act. If the Act itself does not require the observance of constitutional requirement of due process, the enactment is void. The mere accident that the officer or official in the particular case, as a matter of favor or largess, did in the particular instance observe some, or even all, of the essentials of due process, does not cure the Unconstitutional Act.

Due process is a constitutional guarantee of the liberties of the people against encroachment of tyrants and dictators, and the fact that the dictator as a matter of courtesy in one instance grants due process and at his pleasure in another, denies it, is all that is required to

demonstrate that the Act itself and not the mere action of the officer is unconstitutional and void. The freedom and liberties of the American people, bought at so dear a price since the founding of the Republic, are not subject to the whims or caprice of any official or officer nor even to the encroachment of Congress itself. If the enactment of Congress does not meet the constitutional requirement of due process, the Act and all powers conferred under it are void. The leading case on this subject is:

Coe v. Armour Fertilizer Works, 237 U. S. 413, 59 L. Ed. 1027, U. S. Supreme Court (1915).

. . . . Constitutional Law—due process of law—notice and hearing.

6. Extra-official or casual notice, or a hearing granted as a matter of favor or discretion in proceedings for the taking of one's property to satisfy his alleged debt or obligation, is not a substantial substitute for the due process of law which U. S. Const., 14th Amend., requires.

. . . . "To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits. Rees v. Watertown, 19 Wall. 107, 123, 22 L. Ed. 72, 77.

"Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires. In Stuart v. Palmer, 74 N. Y. 183, 188, 30 Am. Rep. 289, which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said:

'It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard.' The soundness of this doctrine has repeatedly been recognized by this court. Thus, in Security Trust & S. B. Co. v. Lexington, 203 U. S. 523, 333, 51 L. Ed. 204, 208, 27 Sup. Ct. Rep. 87, the court, by Mr. Justice Peckham, said with respect to an assessment for back taxes: 'If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but *the question is whether any notice is provided for by the statute.*' (citing the New York case). So, in Central of Georgia R. Co. v. Wright, 207 U. S. 127, 138, 52 L. Ed. 134, 141, 28 Sup. Ct. Rep. 47, the court said: '*This notice must be provided as an essential part of the statutory provision, and not awarded* as a mere matter of favor or grace.' In Roller v. Holly, 176 U. S. 398, 409, 44 L. Ed. 320, 524, 20 Sup. Ct. Rep. 410, the court declared: 'The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion.' And in Louisville & N. R. Co. v. Central Stock Yards Co., 212 U. S. 132, 144, 53 L. Ed. 441, 446, 29 Sup. Ct. Rep. 246, it was said: 'The law itself must save the parties' rights, and not leave them to the discretion of the courts as such.'". (Emphasis added.)

A moment's reflection will demonstrate the necessity of this rule. Were the law otherwise, no Act of Congress, of itself, could ever be unconstitutional. The only thing

that could be unconstitutional would be the particular Act of the particular officer or official in the particular case. He, not the Congress of the United States, would be determining the law and determining whether or not the law was constitutional. The law would be constitutional in the cases in which he chose to observe due process, and unconstitutional only in the cases in which he denied it, and there would never be any need for a three-judge statutory court nor for Title 28, Section 380(a), U. S. C. Needless to say, the confusion incident to such a rule would be unimaginable. One decision of the Supreme Coprt could never settle the constitutionality of any Act of Congress. All that the courts could determine would be the particular act of each particular official, if, as, and when he performed such act, if the official chose to observe the Constitution, the Act of Congress would be valid, but only for that case and if he chose to ignore it, the *Act of Congress would be* INVALID BUT ONLY FOR THAT CASE. Therefore, the salutary rule that the requirements of due process must be met by the Act itself. Then the simple question is posed; if the official does not observe the requirements of the Constitution, his act is not only unconstitutional, but he is violating the exact terms of the law under which he purports to act. His act is then clearly void as beyond the terms of and contrary to the Act of Congress. Therefore, the requirements of Section 380(a) constitutes a special court of three judges to determine the constitutionality of the ACT OF CONGRESS ITSELF. Which judgment, when reviewed by the Supreme Court of the United States, determines for all cases and for all matters whether the Act of Congress is constitutional or is void. The importance of due process cannot be over-emphasized. It is the sole dis-

tinction between tyranny and freedom. The only difference between Hitler's Germany, Mussolini's Italy, Stalin's Russia, and all the other tyrants back through history on the one hand, and liberty loving free America on the other, is the requirement of a written Constitution as carried out by due process of law.

In Hitler's Germany the citizen is awakened in the middle of the night, torn from his family and led to his execution. He was, of course, denied all opportunities for notice, hearing and trial. He never knew what he was charged with. It made no difference. He was shot that night by order of the dictator.

In a lesser sense, iinvolving property rather than human life, this same thing happened to the Federal Home Loan Bank of Los Angeles. Without notice, without hearing, without trial or judges, the gestapo on the morning of March 29, 1946, marched into the offices of the $43,000,000 Los Angeles Bank which was then completely solvent, had a surplus of approximately $1,900,000, had been charged with nothing, and presented an order of the dictator, defendant in this action which order read in substance, "the Federal Home Loan Bank of Los Angeles is liquidated; its charter is forfeited." [R. 293-295.]

And this, these defendants contend, was due process of law under the United States Constitution in free America. The inquiry naturally arises, what has this to do with the seizure of the Long Beach Federal Savings and Loan Association?

The President of the Long Beach Federal Savings and Loan Association was one of the directors of the seized, merger and liquidated Federal Home Loan Bank of Los

Angeles. The Long Beach Federal Savings and Loan Association owned about $360,000 worth of stock in the seized, merged and liquidated Federal Home Loan Bank of Los Angeles. T. A. Gregory, the President of the Long Beach Federal Savings and Loan Association believed that in free America, the Federal Home Loan Bank of Los Angeles had a right to be heard in the Federal Courts. He, therefore, became the rallying point and leader of the stockholders of the seized Federal Home Loan Bank of Los Angeles, and the stockholders of said seized bank met, formed committees, organized, obtained a permit from the Corporation Commission of the State of California to solicit funds for employment of counsel and were about to institute an action in the Federal District Court against THE DICTATOR FAHEY AND HIS COHORTS calling into question this tyrannical, one-day, instantaneous liquidation, merger and dissolution.

The Congress of the United States became interested and hearings before the Select Committee of the House of Representatives to Investigate Executive Agencies Which Exceed Their Authority were scheduled. [Spec. Cong. Committee Ex. "D", Mallone Aff. Supreme Court.]

The President of the Long Beach Federal Savings and Loan Association, T. A. Gregory, was one of the witnesses who was scheduled to appear before this Congressional Investigating Committee to give testimony. By now he commenced to comprehend that even in free America, he and his institution were in very genuine peril. Nevertheless, he was a man of courage and he believed that the fight for freedom would be vindicated. He brought the matter before his board of directors, and having seen the pitiful inadequacy of those attempting to

defend the merged, liquidated and dissolved institution, the Los Angeles Bank, after the gestapo had acted, his board of directors adopted the following resolution:

"WHEREAS, there have been indications that retaliation against this association by those purporting to be representing the Federal supervising authorities, because the representative of this Association duly elected as a director of the Federal Home Loan Bank of Los Angeles—did not disregard the legal rights and best interests of said bank and submit to the dictation of the Federal Home Loan Bank Commissioner; and

WHEREAS, such retaliations are unwarranted and violate the principles of our democratic government and are detrimental to the best interests of this association;

NOW, THEREFORE, BE IT

RESOLVED, that the officers of this association be, and they are hereby, authorized to employ legal counsel to conduct appropriate legal proceedings—to restrain said Federal Home Loan Bank Commissioner or his deputies from interfering with the normal and proper conduct of this association's affairs.

The sum of $100,000 is hereby appropriated and authorized to be expended for that purpose."

Matters proceeded among the stockholders of the seized and destroyed Federal Home Loan Bank of Los Angeles to a point where action was about to be commenced in the Federal Courts. The dictator got wind of the insurrection. Apparently these stockholders thought they had a right to appeal to the courts or thought they had some rights that the dictator must observe. Another lesson was

needed; another example must be made. The gestapo must call again. On Monday, the 20th day of May, 40 days after the Los Angeles Bank liquidation, again without notice, and without hearing the conservator, the defendant A. V. Ammann, was appointed by the dictator Fahey for the Long Beach Federal Savings and Loan Association, an institution which then had $26,000,000 in assets, was completely solvent, had a $1,300,000 surplus, had 16,000 shareholder members and 8000 borrowers.

This time, however, the dictator felt the need of a pretext. In the seizing and dissolving of the Los Angeles Bank, which was a rediscount bank and did not accept deposits from the general public, no sham of any kind was necessary. Simply one scratch of the dictator's pen and the Los Angeles Bank was dissolved, merged and liquidated as of the moment of the signing of the order, but in the Long Beach Federal Savings and Loan Association case, the dictator was touching directly on the people's savings. The instant the shareholders learned that a Federal officer had appointed a conservator, they swarmed down to draw out their money, and very wisely so. Within a very few days nearly one-half of all of the deposits, in excess of $10,000,000 was withdrawn. This run is the only thing that saved the Long Beach Federal from the fate of the Federal Home Loan Bank of Los Angeles. With a run of millions of dollars a day in progress, even the dictator Fahey dared not merge the Long Beach Federal Savings and Loan Association, at least until the run subsided, and that gave time for recourse to the Courts.

The seizure of the Long Beach Federal Savings and Loan Association obviously had several purposes, one, to

intimidate its President, T. A. Gregory, so that he would not testify before the Congressional Investigating Committee against the very dictators who then were in control of his Association which represented 12 years of his work and, two, also as a summary warning to any other stockholders of the seized Federal Home Loan Bank of Los Angeles as to what their fate would be if they had the temerity to let their institutions (also Savings and Loan Associations, many of them under the reign of the dictator Fahey) become parties to the contemplated litigation in the Federal Courts concerning seizure of the Los Angeles Bank. But here the dictator made the error which will bring about his downfall. He misjudged the temper of an aroused American citizenry fighting for their freedom from interference with their savings and their homes. A committee of the shareholder depositors of the seized Long Beach Federal Savings and Loan Association was formed. It brought the instant action as representatives of the class of all such shareholder members and obtained proxies from and represented in excess of 56% of all of such shareholder members. Upon the filing of the Complaint in the Federal District Court in Los Angeles, California, a Temporary Restraining Order was issued *ex parte* preventing the dictator Fahey from merging the Long Beach Federal as he had merged the Los Angeles Bank.

The Congressional Investigating Committee, incredulous at first at the seizure, merger and liquidation of the Los Angeles Bank, immediately took action with a very few days after the seizure of the Long Beach Federal Savings and Loan Association and investigated both such seizures. The hearings were commenced on June 12,

1940. The dictator Fahey testified before this Committee as did many of his cohorts. It is interesting to observe that they stated to the Committee that their reasons or justifications for seizure of these institutions admittedly solvent, prosperous and liquid, both with a surplus exceeding a million dollars, would be submitted to the courts.

Fahey said:

> "Suit has been entered in the Federal Court in an effort to regain control of this institution. Gregory has set up the false and hypocritical cry that I acted in this matter in reprisal against him because of his effort to force the election of Berry as president of the Federal Home Loan Bank, the Los Angeles Bank. It is assumed that the courts will presently determine the justification for our action." [R. 105.]

It is still more interesting to observe that the only defense these defendants made in court was to deny the power of any courts to review their actions. In due course, the Congressional Investigating Committee brought in its report which is in the record of this case as Exhibit D, attached to the Affidavit of Paul Mallonee in Supreme Court in Support of the Motion to Vacate Order Staying Execution. The recommendations of the Report were in part,

> (4) "That the Commissioner revoke the order appointing a conservator for the Federal Savings and Loan Association of Long Beach and restore the assets and affairs of the association to its duly elected management."

(5) "That the appropriate committees of Congress give consideration to the necessity of amending the Federal Home Loan Act in the following particulars."

(c) "Prohibiting the agency from appointing conservators for any member association, except under specific and well-defined limitations."

The Congressional Investigating Committee emphatically ruled against the dictator. Of course, this did not in any way change his dictatorial actions. Motions for Preliminary Injunctions came on for hearing before the three judge statutory court (constituted under Section 380(a) U. S. C. A.) before the Honorable William E. Orr, Circuit Judge for the Ninth Circuit, United States Court of Appeals; Peirson M. Hall, District Judge; and David W. Ling, District Judge. After full argument and submission of Points and Authorities, these three judges unanimously ruled that the Act of Congress purporting to give the dictator Fahey his dictatorial powers was unconstitutional and void, and that, therefore, all actions taken by the dictator, his conservator and their cohorts were also void and gave judgment for the restoration of the seized Long Beach Federal Savings and Loan Association to its officers and directors. Upon seeing that the Congress of the United States and the Federal Courts were still protecting the citizens against tyranny, the thus far intimidated shareholders of the Federal Home Loan Bank of Los Angeles also filed their action in the District Court of the United States at Los Angeles, California, which action is now pending, titled:

In the District Court of the United States
for the Southern District of California

No. 5677-W.M.

Complaint to Enforce Legal and Equitable Claims to, to Obtain Possession of and to Remove Liens From and Clouds Upon Title to, Property and for Other and General Relief.

Federal Home Loan Bank of Los Angeles, a body corporate, Coast Federal Savings and Loan Association, an incorporated association, Standard Federal Savings and Loan Association, an incorporated association, First Federal Savings and Loan Association of Wilmington, an incorporated association, Central Building and Loan Association, an incorporated association, State Savings and Loan Association, an incorporated association, Los Angeles American Savings & Loan Association, an incorporated association, Plaintiffs, vs. Federal Home Loan Bank of Portland, sometimes known and referred to as Federal Home Loan Bank of San Francisco, a body corporate, John H. Fahey, individually, John H. Fahey, as chairman of The Federal Home Loan Bank Board and purportedly serving as Federal Home Loan Bank Commission, and Sixteen Does, Defendants.

Characteristically dictator Fahey makes the same defense to this action. He is beyond the power of all courts. His Motions to Dismiss for lack of jurisdiction are also pending, as yet undetermined in said action.

The real issue of this case is dictatorship and tyranny vs. freedom and liberty. Due process of law is the distinguishing feature. Under tyranny there is no need of due process; the will of the tyrant is the Supreme

law of the land. The citizen is executed, his property is seized, his savings are merged, his financial institutions liquidated, (the word liquidated has come to have a special meaning under dictatorship. It has grown from its financial meaning to also involve the life of the subject), all without notice, without hearing, without trial.

Due process is the exact reverse of this. Due process requires notice, presentation of charges, an opportunity for a defense and above all due process requires an impartial disinterested tribunal. The dictator reviewing his own tyrannical acts is not due process. The growth of the word liquidated as used during the reign of terror of the gestapo in Germany and Italy and Russia, clearly indicates the danger to which this type of action by tyrannical officials leads. It is but a series of steps from liquidating a $43,000,000.00 institution by the scratch of a pen to liquidating the savings and homes of the members of the Long Beach Federal Savings and Loan Association to liquidating the citizens themselves if they make too vehement a protest. When the findings of the Congressional Investigating Committee and the judgment of the three judge court in Los Angeles are affirmed and upheld, as we are convinced they will be by this Honorable Court, the growth of tyranny and dictatorship will be abruptly checked in free America. The citizens will have no cause to wonder whether the liquidation of savings and homes may some day grow into the liquidation of protesting citizens. When the dictator and tyrant knows that his acts must be justified before an impartial Federal Court, with public sessions held in the community of the thousands of citizens whose savings and homes are being "liquidated", he will not usurp unconstitutional

powers to coerce and intimidate those protesting against his tyranny.

Due process was won in ancient times against the kings of England by force of arms of the revolting people. It was preserved in our Constitution by force of arms of the revolting colonists. It is being defended in this court against the tyrannical oppression of the dictator Fahey by orderly presentation in courts of justice. We are confident that in free America neither force of ballots nor force of arms will again be necessary to preserve the liberties of due process.

Much beclouding of the issue will undoubtedly be raised by appellants on grounds of supervision of institutions receiving the people's savings and of "protecting" of the small depositors and the small home owners. With the principle supervision and protection we heartily agree, but tyranny and despotism do not aid in such protection. They merely break down the liberties and freedom of the citizens.

If there was any action required for the protection of anyone connected with the Federal Home Loan Bank of Los Angeles, this action could and should have been taken after due notice, hearing and process. The justifications, if any, for the one day liquidation could certainly have been made to the Congressional Investigating Committee or to the courts now trying the matter. If the act was not one of tyranny, why the one day, instantaneous, liquidation, merger and dissolution?

If supervision or regulation of any of the matters connected with the Long Beach Federal Savings and Loan Association were required, this also could and should

have been done, upon notice, after hearing and with an opportunity to correct any matters objected to by those purportedly supervising and regulating.

It is not necessary that every Federal Savings and Loan Association and every Federal Home Loan Bank in the United States shall owe its existence from moment to moment and hour to hour to the unrestrained whim and caprice of one tyrannical dictator in order to protect the savings of the people and if it were so necessary, far better that no such institutions ever exist. Dictatorship and tyranny are insidious, creeping, growing things. We must never forget that Hitler was once elected. This, however, was the last election in Germany.

This case illustrates more clearly than any argument the urgency of the requirement that due process be expressed in the Act of Congress itself. If delegated as the Act attempted to here, to a five-man board, in a few years the five-man board is replaced by the one-man dictator, and the delegated power to make the laws of the United States is exercised to deny the recourse to the courts as was done in the regulations adopted by appellant Fahey. Every savings institution under the reign of this dictator exists at his sole sufferance. At any hour of the day or night an official may walk in with an order as these very defendants walked into the Federal Home Loan Bank of Los Angeles and say, "yesterday you were merged, liquidated and dissolved by an order signed in Washington." And this will be the first intimation that the citizens have that the dictator has struck. Or, as happened in the Long Beach Association case, one of the dictators deputies walks into the citizen's office and says, "Your institution is taken over; I am the conservator; I

was appointed in Washington, D. C., 3000 miles away, this morning," and when asked for any proof whatever of his statement, the seizing officer calmly signs his own name to his own seizing order appointing himself as conservator and demands the instant surrender of $26,000,000 of assets upon penalty of federal criminal prosecution for resisting an officer of the United States. Such is the testimony of the seizing officer himself [p. 202, line 9, printed record]:

> "Mr. Ammann. He asked me for a copy of this. I hesitated because I explained to him that it had come to me over the phone. I didn't know whether it was typographically correct and he had no objection to me giving it to him subject to the fact that he could find out whether it was certified or not. I told him that someone was on the way from Washington with certified copies that day; that he could have one. He was willing to take the one I had, and I certified it and gave it to him."
>
> [Page 202, line 23]
>
> "Mr. Ammann. In matters of this character where distance is a great element, you can't enter an order here and then have somebody go 3,000 miles with it and take possession of an institution where that is necessary, with any element of surprise; and surprise is an important element, in my judgment, in accomplishing that."

The only thing missing from the seizure order was the phrase, "Heil Hitler."

That such an act could take place in free America is beyond belief. The Honorable Supreme Court's burden in deciding this case is indeed heavy. Your Honors will un-

doubtedly be confronted with an enormous smoke screen of "supervision" and "regulation" and "protection of the savings of the people." Such beneficient purposes have no need of tyrannical dictatorship for their execution. The savings of the people in state chartered savings and loan institutions are amply protected by requiring the interpossession of an independent court in all questions involving receivership, conservatorship, involuntary liquidation and involuntary merger.

It is interesting to observe from what the dictator "protected" the savings of the people. The Long Beach Federal Savings and Loan Association was founded in 1934 by these very same officers and directors from whom it was seized by the dictator Fahey. At that time it had assets of $7500. Under these same directors and officers it grew in twelve years in 1946 to $26,000,000 with a surplus of $1,300,000. It had uniformly paid dividends sometimes as high as 4% per annum, from the date of its inception to the date of its seizure. During the last month before it was seized (April, 1946), its growth in shareholder accounts was approximately *$537,956.15.* With this sort of twelve year record of solvency, prosperity and phenomenal growth, the savings of the public in this institution suddenly, for some undisclosed reason, needed the "protection" of the dictator Fahey. As he "protected" the Federal Home Loan Bank of Los Angeles he started to "protect" the Long Beach Federal Savings and Loan Association. The liquid condition of the Long Beach Federal Savings and Loan Association may well be judged from the fact that when the run ensued upon its seizure by defendants Fahey and Ammann, they, from its assets, net more than $10,000,000 in withdrawals, nearly 50%, in a very few days.

I-B.

Section 5-d Denies Due Process Because It Does Not Provide an Impartial Tribunal.

The Anglo-American principle of due process is completely summed up in the language of the street as "fair play." As distinguished from the execution without trial gestapo methods of the Eureopean tyrannies and dictatorships, the Anglo-American principle is that even the sovereign rules, whether king or Congress, is subject to restraints upon the exercise of its powers. The most important of these restraints is that of due process which consists of several vitally indispensable elements. The accused, whether in jeopardy of his life or liberty or merely of his property, and whether an individual or corporation is entitled by the requirements of due process to the following:

1. Notice. Notice of what he is charged with, where and when this charge is to be made and before whom, and by what authority he is to be tried.

2. He is entitled to a trial and hearing. This means an opportunity for an orderly presentation by both sides of the matters for and against the decision sought from the tribunal.

3. He is entitled to duly constituted tribunal WITH AUTHORITY TO COMPEL THE PRODUCTION OF EVIDENCE BOTH for and against the accused.

4. And most important of all THE ACCUSED IS ENTITLED TO AN IMPARTIAL TRIBUNAL.

There are unquestionably other elements of due process not here involved, by their conspicuous absence from these seizures. EVERY ONE OF THE FOUR ELEMENTS above

enumerated, notice, hearing, duly constituted tribunal, and impartial tribunal were completely flouted and ignored *by the Act of Congress itself* in both the Los Angeles Bank and the Long Beach Federal Savings and Loan Association seizure and confiscation.

From the time of the first expression of due process, Magna Carta, nearly 900 years ago, the Anglo-Saxon sense of fair play as expressed in due process has insisted that no man can be judge in his own case. The latest expression of this doctrine is in the:

U. S. A. v. United Mine Workers, John L. Lewis, et al., 759-760, 781, 782 and 811 October Term (1946).

"The historic phrase 'a government of laws and not of men' epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. *'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law*, as finally pronounced by this Court. . . . . So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. *No one, no matter how exalted his public office or how* righteous his private motive, *can be judge in his own case.* That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over 'jurisdiction' are apt to raise difficult technical

problems. They usually involve judicial presuppositions, textual doubts, confused legislative history, and like factors hardly fit for final determination by the self-interest of a party. . . . . Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide. . . . The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they often have been, vindicated. When in a real controversy, such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy. . . . . There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny. . . . *The greater the power that defies law the less tolerant can this Court be of defiance.*" (Emphasis added.)

The situation of an interested party pretending to administer justice as between himself and the helpless defendants is so abhorrent to all of the rules of due process that the tiniest amount of self-interest has been held to completely disqualify the judge or other official administering justice in hearing the case or determining the matter. An illustration of how far this doctrine of preserving the fairness and impartiality of the tribunal has been carried is the case of:

Tumey v. Ohio, 273 U. S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927).

"JUDGE—INTEREST—DISQUALIFICATION.

(1) Officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided.

CONSTITUTIONAL LAW—DUE PROCESS—BIAS OF JUDGE.

(2) Accused is unconstitutionally deprived of due process of law if his liberty and property are subject to the judgment of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him.

JUDGE—DISQUALIFICATION—RIGHT OF ACCUSED.

(11) Accused has a right to an impartial judge regardless of the evidence against him and may halt the trial by objections reasonably raised because of the disqualifications of the judge.

'It is finally argued that the evidence shows clearly that the defendant was guilty and that he was only fined $100 which was the minimum amount and therefore that he cannot complain of a lack of due process, either in his conviction or in the amount of the judgment. The plea was not guilty and he was convicted. *No matter what the evidence was against him, he had the right to have an impartial judge.* He reasonably raised the objection and was entitled to halt the trial because of the disqualification of the judge which existed both because of his direct pecuniary interest in the outcome and because of his official motive to convict and to graduate the fine to help the financial needs of the village. There were thus presented at the outset both features of the disqualifications. The judgment of the Supreme Court of Ohio must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.'" (Emphasis added.)

The insignificant personal interest of the trifling sum of costs to be received by the judge from the convicted misdemeanor offender was held in this case to be a denial of an impartial tribunal of a fair hearing, and, there-

fore, a denial of due process. In the light of this decision let us consider the "administrative hearing", enjoined by the Honorable Three Judge Court at Los Angeles and, according to the contentions of appellants, the only remedy available to the defendant Long Beach Federal Savings and Loan Association.

Dictator Fahey who had summarily merged, liquidated and dissolved without notice, without hearing and without cause, the $43,000,000.00 Federal Home Loan Bank of Los Angeles and who had similarly, without notice, without hearing and solely to intimidate those about to litigate with him the justification of his former seizure, also appointed a conservator for the Long Beach Federal Savings and Loan Association, was to act as judge, jury, prosecutor, and executioner and determine for himself and by himself whether or not the acts he had previously committed were right or wrong. His determination of his own case by himself was to be the only hearing or trial ever accorded to the defendant Long Beach Federal Savings and Loan Association, and this is said by the appellants Fahey and Ammann to be entirely constitutional and full due process of law. Needless to say, the Act itself does not so provide, but the failure of the Act of Congress, Section 5D, Home Owners' Loan Act which reads:

> "Sec. 5(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation,"

to provide for any due process, notice, trial, or impartial tribunal, is one of the reasons that this section was held unconstitutional by the three judge court. In ordinary cases some presumption might be indulged that even though interested in justifying his own acts, the Commissioner might be presumed to be impartial. No such presumption can exist in this case. The circumstances of the seizures alone completely refute the probability of impartiality, but the matter is closed to any further question by the testimony of Fahey and of Harold Lee (who is Fahey's chief deputy, who claims that he and not Fahey made the decision for the seizures), before the Congressional Investigating Committee. In the first hectic days after the seizure, counsel for the Association advised it to request a more definite statement of reasons for the appointment of the conservator and to also request an administrative hearing from the seizing commissioner. Needless to say, this was before the Congressional testimony of Fahey and Lee. When Fahey and Lee both swore under oath before the Congressional Investigating Committee investigating their seizures that they who purported to act as their own judges in their own case had already decided the matter before the submission of any evidence, before any hearing, in fact before even the filing of the charges, the submission to a farcical hearing became clearly impossible. The testimony of Lee and Fahey was as follows:

"Mr. Fahey: It would have to go out of business as a Federal, certainly. It could change to a guaranteed stock State chartered institution if it wanted to, provided the State of California would give them a charter.

Mr. Fishbach: Provided they could get a State Charter?

Mr. Fahey: Yes, I doubt if Mr. Gregory would get one. [R. 104.]

Mr. Fahey: This money would never have been advanced to these associations, *they would have never secured Federal charters,* and we would not be here today if the Federal Home Loan Bank board had been informed of the unscrupulous practices of the Gregory's in connection with the affairs of the Reliable Savings and Loan Association of Long Beach, which had to be taken over by the State of California just before they obtained the Federal charters to which I have referred." (Emphasis added.) [R. 105.]

Governor Lee of Federal Home Loan Bank Administration said:

"You haven't heard the other side of the case yet, Congressman, and when this is finally determined in court, I am sure, quite confident, that it will be determined favorable to the Federal Home Loan Bank Administration, and I think if you don't withhold opinion, you will be embarrassed, because we have the facts.

Mr. Jennings: I . . . not going to be embarressed.

Mr. Lee: *I don't think Mr. Gregory can ever get it back from that institution.*

Mr. Jennings: You have destroyed it.

Mr. Lee: That isn't his institution. . . . They are afraid that this group may get back into possession of that institution, and *I am afraid that they will get back* and hurt it." (Emphasis added.) [R. 110.]

After such testimony, the enjoining of such hearing by Restraining Order and Preliminary Injunction became the impelling duty of every court to which the matter was submitted if justice still prevailed in free America.

For the "judge," who has already publicly under oath announced his decision, in advance of the hearing in which he judges his own conduct and decides whether he was right or wrong in acts he has previously done, to insist that the helpless defendants must submit to this farce, as their only recourse and as complete due process, is beyond even the ambitions of the notorious Star Chamber during the reign of the English tyrants. Even Hitler's gestapo did not go through the farce of pretending to try the victim. That there may be no doubt, the so-called Order for the hearing is as follows:

"FEDERAL HOME LOAN BANK ADMINISTRATION.

Order No. 5309. Date June 5, 1946.

Whereas, a conservator has been appointed for the Long Beach Federal Savings and Loan Association, Long Beach, California; and

Whereas, an answer has been filed and written demand made for a hearing, pursuant to Section 206.2 of the Rules and Regulations for the Federal Savings and Loan System:

It is hereby ordered, that a hearing shall be held at Room 510 Chester Williams Building, 215 West Fifth Street, Los Angeles, California, on Wednesday, the third day of July, 1946, at 10:00 o'clock in the forenoon, before a Hearing Officer, at which hearing the Long Beach Federal Savings and Loan Association, Long Beach, California, may appear and show cause why the conservator should not have been ap-

pointed and why an order should be entered by the Federal Home Loan Bank Administration discharging the conservator;

And it is further ordered, that any person, partnership, association, or corporation claiming to have an interest in the subject matter involved may, at any time before the closing of the hearing, file a petition for leave to intervene at said hearing;

And it is further ordered, that the said Long Beach Federal Savings and Loan Association, any member or creditor thereof, the Federal Home Loan Bank Administration, and any party whose petition for intervention has been allowed, shall have the right, by counsel or otherwise, to appear and be heard at the hearing, to produce, examine, and cross-examine witnesses, to introduce documentary or other evidence, and to file briefs and reply briefs;

And it is further ordered, that the said Hearing Officer shall have complete charge of said hearing; may receive, admit, allow, exclude and deny petitions and evidence, including the hearing of testimony according to the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States, provided, however, that such rules may be relaxed by the said Hearing Officer in order to promote the just determination of the ultimate issue; may limit the time within which briefs and reply briefs may be filed and may require the furnishing of copies thereof to other parties; shall order the preparation of a record, including a transcript of the testimony and evidence presented; may make rulings and note exceptions, but shall not have power to decide any motion to dismiss the proceedings or other motion that involves final determination of the ultimate issue; may hear arguments; may adjourn the said hearing from time to time, if, in his judgment, it is desirable to the orderly conduct of

the said hearing or to promote the just determination of the ultimate issue; and may do all such things and have all such powers as are necessary or proper to the orderly conduct of said hearing or to promote the just determination of the ultimate issue, but shall not have power to finally determine the ultimate issue;

And it is further ordered, that after the close of the hearing the said Hearing Officer shall transmit as promptly as possible to the Secretary to the Federal Home Loan Bank Administration the complete transcript of testimony taken, together with any exhibits, briefs, or other material incorporated in the record of said hearing;

And it is further ordered, that the Secretary or an Assistant Secretary shall advise all parties appearing at said hearing in person or by attorney, by registered mail, return receipt requested promptly upon receipt of said transcript, of the filing thereof, and shall make such transcript available for inspection by any such party and supply a copy thereof, upon request, to any such party and supply a copy thereof, upon request, to any such party at a price which will cover the reasonable cost of its preparation, as determined by the Secretary.

And it is further ordered, that notice of the hearing herein provided for shall be served by the Secretary to the Federal Home Loan Bank Administration by mailing a copy of this order by registered mail to Long Beach Federal Savings and Loan Association, c/o its President, T. A. Gregory, 350 E. Fourth Street, Long Beach, 2, California.

* * * * * * * * * *

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on June 5, 1946.

(Seal) J. FRANCIS MOORE,
Secretary."

The court will observe that the so-called hearing officer had no power of decision. He was an errand boy. And he submitted the results of his errands to Fahey and Lee who would decide their own case for themselves. Even if the Act of Congress had provided for hearing and authorized some procedure, *which it did not,* due process would have been denied by the publicly pre-announced decision of the trial judge.

Morgan v. U. S., 82 L. Ed. 1129 (1937), 304 U. S. 158, S. Ct. 999.

Appeal from District Court of Three Judges, dismissal of bills of complaint in fifty suits involving the validity of an order as the Secretary of Agriculture fixing maximum rates to be charged by stockyards. The question was the validity of a regulation order adopted by the Secretary of Agriculture, indirectly of course involving the validity of the act of congress authorizing the regulation.

> "On this appeal, plaintiffs again contend (1) that the secretary's order was made without the hearing required by the statute, and (2) that the order was arbitrary and unsupported by substantial evidence.
>
> "The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administration regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that *the legislature* shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand a

'fair and open hearing'—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as 'inexorable safeguard.' St. Joseph Stock Yards Co. v. U. S., 298 U. S. 38, 73, 80 L. Ed. 1033, 1052, 56 S. Ct. 720; Ohio Bell Telephone Co. v. Public Ut. Comm., 301 U. S. 292, 304, 305, 81 L. Ed. 1093, 1101, 1102, 57 S. Ct. 724; Railroad Commission v. Pac. Gas and Electric Co., 302, U. S. 388, 393, *ante*, 319, 58 S. Ct. 334; Morgan v. U. S., 298 U. S. 468, 80 L. Ed. 1288, 56 S. Ct. 906, *supra*. And in equipping the Secretary of Agriculture with extraordinary powers under the Packers and Stockyards Act, the Congress explicitly recognized and emphasized this requirement by making his action depend upon a 'full hearing.' Sec. 310. . . . 'Part from what was said on its behalf in the oral argument, the government formulated no issues and furnished appellants no statement or summary of its contentions and no proposed findings. Appellants request that the examiner prepare a tentative report, to be submitted as a basis for exceptions and argument, was refused.'

". . . . Those who are brought into contest with the government in quasi-judicial proceeding administered at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposals before it issues its final comment.

"No such reasonable opportunity was accorded appellants.

". . . Congress in requiring a 'full hearing' had regard to judicial standards—not in any technical sense but with respect to those fundamental requirements of fairness which are of the essence of due

process in a proceeding of a judicial nature. If in an equity cause, a special master or the trial judge permitted the plaintiff's attorney to formulate the findings upon the evidence conferred *ex parte* with the plaintiff's attorney regarding them, and then adopted his proposals without affording an opportunity to his opponent to know their contents and present objections, there would be no hesitation in setting aside the report or decree as having been made without a fair hearing. The requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps.

"The answer that the proceeding before the Secretary was not of an adversary character, as it was not upon complaint but was initiated as a general inquiry is judicial. It has regard to the mere form of the proceeding and ignores realities. In all substantial respects the government acting through the Bureau of Animal Industry of the Department was presenting the proceeding against the owners of the minor agencies. The proceeding had all the essential elements of contested litigation with the government and its counsel on the one side and the appellants and their counsel on the other. It is idle to say that this was not a proceeding in reality against the appellants when the very existence of their agencies was put in jeopardy.

". . . The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society, are to serve the purposes for which they are created and

endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

Inland Steel Co. v. National Labor Relations Board, 109 P. (2d) 9, Cir. Ct. of Appeals, Seventh Circuit (1940).

"(8) CONSTITUTIONAL LAW.

"'Due Process' implies a tribunal both impartial and mentally competent to afford a hearing.

"(9) CONSTITUTIONAL LAW.

"The fact that a court's judgment may be justified on the merits does not obviate the requirement of a fair trial and recognition of such principle is essential in proceedings before administrative agencies.

"(8) That a trial by a biased judge is not in conformity with due process is sustained by the authorities. In Tumey v. Ohio, 273 U. S. 510, 535, 47 S. Ct. 437, 445, 71 L. ed. 749, 50 A. L. R. 1243, the court said: '. . . . No matter what the evidence was against him, he had the right to have an impartial judge.'

"'The Court in Jordan v. Mass., 225 U. S. 167, 176, 32 S. Ct. 651, 652, 56 L. Ed. 1038 said: 'Due process implies a tribunal both impartial and mentally competent to afford a hearing.'

"The principle is aptly stated in People v. Neimark, 154 App. Div. 760, 139 N. Y. S. 418, 420, where it is said: '. . . . The first idea in the administration of justice . . . is that a judge must necessarily

be free from all bias and partiality. He cannot be both judge and party, arbiter and advocate in the same cause. Mankind are so agreed in this principle that any departure from it shocks their common sense and sentiment of justice.'

"(9) And the fact that the court's judgment may be justified on the merits does not obviate the requirement of a fair trial. As was said in U. P. R. Co. v. Syas, S. Cir. 245 F. 561, at page 568: '. . . But no judgment is just if not obtained by due process of law; otherwise, courts could enter judgments without trial. . . .'

"The recognition of the principle is as essential in proceedings before administrative agencies as it is before courts. As was said in Ohio Bell Telephone Co. v. Public Ut. Comm., 301 U. S. 292, at page 304, 57 S. Ct. 724, at page 730, 81 L. ed. 1093: '. . . . Indeed much that they do within the realm of administrative discretion is exempt from supervision if these restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorably safeguard' (citing case) of a fair and open hearing be maintained in its integrity (citing cases) the right to such a hearing is one of the 'rudiments of fair play', (citing cases) assured to every litigant by the 14th Amendment as a minimal requirement. (Citing cases.) There can be no compromise on the effecting of convenience or expediency or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

The rule is again clearly stated in *Morgan v. U. S.*, 304 U. S. 1, 14, 58 S. Ct. 773, 999, 82 L. Ed. 1129.

National Labor Relations Board v. Phelps, et al., 136 F. (2d) 562 (1943), Circuit Court of Appeals, Fifth Circuit.

"1. CONSTITUTIONAL LAW.

"A fair trial by an unbiased and non partisan trier of facts is of the essence of the adjudicatory process as well when the judging is done in an administrative proceeding by an administrative functionary as when it is done in a Court by a Judge. U. S. C. A. Const. Amend. 14.

"4. CONSTITUTIONAL LAW.

"Partiality by trier of facts particularly when unrelieved against though challenged, vitiates all subsequent proceedings, and no judgment based on them may stand." U. S. C. A. Const. Amend. 14.

"The Board does not, indeed, it could not, contest the correctness of the principle respondents invoke, for a fair trial by an unbiased and non-partisan trier of the facts is of the essence of the adjudicatory process as well when the judging is done in an administrative proceeding by an administrative functionary as when it is done in a court by a judge. Indeed, if there is any difference, the rigidity of the requirement that the trier be impartial and unconcerned in the result applies more strictly to an administrative adjudication where many of the safeguards shall have been thrown around court proceedings have, in the interest of expedition and supposed administrative efficiency been relaxed. Nor will the fact that an examination of the record show that there was evidence which would support the judg-

ment, at all save a trial from the charge of unfairness, for when the fault of bias and prejudice in a judge first rears its ugly head, its effect remains throughout the whole proceeding. Once partiality appears, and particularly when, though challenged, it is unrelieved against, it taints and vitiates all of the proceedings, and no judgment based upon them may stand."

Citing of further decisions along this line can be of little use. The facts speak for themselves. If in free America the judge to determine his own confiscation of a $26,000,000.00 association can properly announce to Congress under oath what his decision will be, before any trial, before any hearing and before the submission of any evidence, then the due process clause of the United States Constitution and the ideals of fair play and fair trial have indeed departed from this land.

Not only have appellants Fahey and Ammann set themselves up as the only tribunal to judge their own acts, but they have undertaken to deny to the officers and board of directors of the seized Association any power of recourse to any court.

By Regulation No. 207.3 the defendant Fahey, purporting to enact the laws of the United States, provided as follows:

"Such officers and directors or any of them shall not thereafter have, exercise, or act in connection with any such rights, powers or privileges or any asset or property of any nature of this Association: provided, however, that nothing herein shall deny to

such officers and directors the right from time to time to address such petitions authorized by the board of directors as they may have to the Federal Home Loan Bank administration or its representatives designated to receive such petitions concerning such Association or to represent the Association at hearings provided in these Rules and Regulations."

By Federal Home Loan Bank Order *Bulletin 54*, dated March 25, 1946 [R. 361-363], denying subpoena power of courts, defendant Fahey evidences his contempt for the authority of all United States courts unequalled except by his contempt for the authority of the Congress of the United States. He, Fahey, a supposed servant of the people, can by his sole order prevent the board of directors and officers of a confiscated Association from "taking any action except addressing petitions to the board," now Fahey. He can, by his sole edict, deny the subpoena process of all of the United States Courts. Under this Order you would expect his subordinates and himself to deny the subpoena power and process of this very Supreme Court of the United States. Small wonder that he thinks he can constitute himself a court and make his own laws. If he can deny the subpoenas of even the Supreme Court of the United States, he is indeed the dictator he thinks himself. If the constitutionality of these acts be upheld in this case by this Honorable Supreme Court, it, the Supreme Court of the United States, and all of the United States courts will exercise only such authority as the defendant Fahey chooses to give them by

his various regulations. If he can make a regulation preventing a board of directors and officers of a seized Association from doing anything except petition him and if he can deny the subpoena power of all United States courts, he can adopt a regulation that he himself is immune from the service of all Summons or process of Congressional Investigating Committees, United States courts, Presidential Orders, and all other Governmental and Constitutional authority of the United States of America. The issue in this case is not merely delegation of authority or even "delegation run riot." The issue is usurpation and dictatorship by an official, bureau or board not only of the powers of Congress and the powers of the courts but of the very Constitution of the United States itself. If this Section 5(d) be held constitutional, Fahey's contention that he is beyond the power of all courts will have been upheld. This appeal before this Honorable United States Supreme Court is either the first of many such appeals or the last. For if the act is constitutional, neither the shareholders whose savings are in the Association nor the home owners who have borrowed money from the Association nor the Association itself nor the officers or directors elected by the shareholders and depositors have any rights nor any property which Fahey need respect. Section 5(d) gives him authority to do as he pleases. Either the Constitution of the United States is the last barrier and prevents such authority being valid, or the Government of the United States has passed from the Congress and the Courts and the Executive into the hands of Fahey.

I-C.

Section 5-D Denies Due Process Because Tribunal Created by Implication Was Without Authority.

One of the essential elements of due process is the requirement that the tribunal conducting the hearing be a duly constituted tribunal with authority to enforce its orders.

The parent Federal Home Loan Bank Act and the Amendatory and Companion Home Owners Loan Corporation Act and particularly Section 5(d) of the last act contained no authority whatsoever to defendant Fahey to constitute himself as a court; to issue any process or to conduct any hearing; the absence of such authority becomes glaringly apparent when one considers the functions at such a hearing. The hearing is to determine *upon evidence* the infliction of the penalty, of dissolution, merger, or liquidation upon the association. At such a hearing it must be expected that all of the functions performed by a court will be necessary. Among the functions essential to the administration of justice and the elicitation of the truth, is that of compelling the attendance and the testimony of hostile and unwilling witnesses. Does Fahey pretend that at his hearing wherein he judges himself and his own acts, that he has the power to issue a subpoena on behalf of the Association, to compel the attendance of witnesses who would probably have vital evidence? If such witnesses should refuse to attend the hearing, does he arrogate to himself the power of punishing as a contempt of Fahey the refusal of a witness to attend the hearing? Or the refusal to testify as to matters the witness does not care to disclose? Assumption, implication and necessity may stretch language a tremendous distance, but surely it cannot supply completely missing essentials.

If the constitutionality of this be upheld, Fahey will have been authorized to create his own court, be his own judge, and jury, make his own rules of law and evidence of process and procedure, issue his own subpoenas in such form and with such penalties as he alone shall determine, and to decide the extent of his own jurisdiction. If he has by implication, the power of subpoena, he can compel the attendance of witnesses from the farthest corners of the United States. This power is denied even to our Federal courts. If a subpoena thus issued by Fahey is disobeyed will he send one of his deputies to arrest contumacious witnesses and decide upon his own method of punishment? Will he imprison the recalcitrant witnesses in Fahey's own prisons and institutions of correction? Or do none of these powers actually exist and may this process self issued and self designated be ignored? It is essential that the defendant have the protection of compelling reluctant witnesses to testify under oath. Such power of compulsion is given to no one by any of the acts of Congress here held unconstitutional. The other alternative is that the only due process is given by a tribunal self appointed by implication with no power to compel testimony, with no power to punish for contempt, with no power to enforce its orders; in truth and fact—no tribunal at all. But Fahey seeks to present an appeal to the courts from the action of this kind of a tribunal.

The importance of the duly constituted tribunal with proper powers of coercion becomes instantly apparent when one considers the defense to be made by the institution defending itself.

Could Fahey issue subpoenas to financial institutions to produce at the "Board Hearings" the evidence essential to determine the truth or falsity of the charges at issue

in the hearing? Or are Fahey's decisions to be made on the basis of whispers, innuendo, surmises, and guesses? As there is no power to compel attendance, no power to punish refusal to testify, no real evidence can be produced at the administrative hearing. If the tribunal has no power to take testimony it cannot administer an oath. Witnesses testifying falsely or refusing to testify run no risk of punishment and all of the bulwarks and protections built around judicial proceedings through the centuries of their development have completely disappeared.

The very statement of such conduct taxes the power of belief that any commissioner or officer of the United States could imagine that he had the power to do these acts. It is of course fundamental that a court must be created by law and that its jurisdiction or power is only that given it by law. The Supreme Court of the United States in the following case concerning a state court illustrates the principle:

> *Scott v. McNeal*, 154 U. S. 34, 38 L. Ed. 901, U. S. Supreme Court (1893).
>
> " . . . The 14th Article of Amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains 'nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the state, whether through its legislative, its executive or its judicial authorities. *Ex parte Virginia ('Virginia v. Rives')*, 100 U. S. 313, 318, 319 (25:667, 668); *Ex parte Virginia*, 100 U. S. 339, 346 (25:676,

(79); *Neal v. Delaware*, 103 U. S. 370, 397 (26:567, 574). And the first one, as said by *Chief Justice Waite in United States v. Cruikshank*, 92 U. S. 542, 554 (23:588, 592), repeating the words of *Mr. Justice Johnson in Bank of Columbia v. Okely*, 17 U. S. ....., 4 Wheat. 233, 244 (4:559, 561), was intended 'to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.' . . ."

"The words 'due process of law,' when applied to judicial proceedings as was said by Mr. *Justice* Field speaking for the court, 'mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. *To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit*: AND if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance." (Emphasis added.)

Pennoyer v. Neff, 95 U. S. 714; 733 (24:565, 572).

As the Supreme Court said in the above case, "There must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit." There is no law for the creation of Fahey's court, excepting against the dictator's own regulations made by himself for himself. *Congress has never authorized Fahey's Administrative hearings or court.*

I-D.

Section 5-D Denies Due Process Because It Authorizes Merger Without Notice and Without Hearing.

The language of the act of Congress held unconstitutional is:

> "(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such association, including the power to appoint a conservator or a receiver, to take charge of the affairs of any such association and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

The mere reading of the language of the act irrefutably demonstrates that it is unconstitutional. Under the authority granted, the one man "board" could, without consent of either institution, merge a prosperous, solvent institution in Washington, D. C., with a bankrupt, closed institution in Nevada or Arizona. He could merge the assets of the Washington, D. C., institution into and with another institution 3000 miles or even 10,000 miles away. He could merge the assets built up by a lifetime of faithful fidelity and trust by the officers of one institution with the risks and liabilities created by another dissolute and improvident management.

Today you are a depositor of a prosperous multi-million dollar solvent association in Washington, D. C. Tomor-

row you pick up the newspaper and find that you are now a depositor in, and your money and assets are, in the control of an institution unknown to you and thousands of miles from your locality. The mere statement sounds fantastic but this case actually surpasses the statement.

The Federal Home Loan Bank of Los Angeles existed at Los Angeles, California, and had $43,000,000.00 in assets. The Federal Home Loan Bank of Portland existed in Portland, Oregon, 1146 miles away and on the morning of March 29, 1946, both ceased to exist and a new institution sprang into existence at San Francisco, California, about 500 miles from Los Angeles and about 743 miles from Portland, Oregon. The hundreds of shareholders at both institutions learned for the first time that their institutions ceased to exist; that they were involuntary stockholders in a new institution, hundreds of miles from the location of their old institutions, with totally unknown assets and liabilities, with an entirely different board of directors and officers, all without a vote being taken by any of the shareholders concerned, without an opportunity to withdraw or protest or even know what was being done to them or their assets until the acts were all completed. And this is said, by defendants Fahey and Ammann, to fully comply with the due process clause of the Constitution!

It is significant that the only case bearing any similarity to these facts which has been brought before the United States courts is that involving the acts of a military

governor in a conquered territory, during and immediately subsequent to a war. The case of

Ochoa v. Hernandez, 230 U. S. 139, 57 L. Ed. 1427, U. S. Supreme Court (1913).

". . . Constitutional law . . . due process of law . . . definition.

"6. The guaranty of due process of law inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, without notice and opportunity for a hearing.

. . . Without the guaranty of 'due process' the right of private property cannot be said to exist, in the sense in which it is known to our laws. The principle, known to the common law before Magna Charta, was embodied in that Charter (2 Coke, Inst. 45, 50), and has been recognized since the Revolution as among the safest foundations of our institutions. Whatever else may be uncertain about the definition of the term 'due process of law,' all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing."

In the foregoing case the property of one was to be given to another by an order of a military governor. In our case, the $40,000,000.00 of the Federal Home Loan Bank of Los Angeles was given to the Federal Home Loan Bank of Portland by a similar order, this time by

a so-called commissioner. The purpose of elaborating upon the Los Angeles Federal Home Loan Bank merger is because such a merger was fully intended to be the fate of the seized defendant Long Beach Federal Savings and Loan Association and was prevented only by the fact that on the day it was seized, runs of millions of dollars a day immediately occurred and before the runs had subsided, a restraining order preventing such mergers had been issued by the Federal District Court. One not familiar with the activities of these defendants Fahey and Ammann would hardly credit the necessity for restraining a merger until a hearing in the courts could be held, but the Federal Home Loan Bank of Los Angeles matter completely answers any doubts as to what these defendants would have done unless the courts prevented them. Significantly, the Supreme Court of the United States held this action void and said:

> "Whatever else may be uncertain about the definition of the term 'due process of law,' all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing."

The "protection" of the people's savings does not require such tyrannical dictatorship. Savings transferred by dictatorial fiat from one state to another thousands of miles from their place of deposit, involuntary assumption of unknown liabilities, complete change of officers and directors from those elected by the people whose assets

are thus dealt with is not protection, does not inspire confidence, and cannot be justified. Appellants, defendants Fahey and Ammann, profess great astonishment that a run of millions of dollars a day in withdrawals ensued immediately on their seizure of the Long Beach Federal Savings and Loan Association. The public had read of the one-day liquidation and dissolution of the Federal Home Loan Bank of Los Angeles and the transfer of its assets to San Francisco, some 500 miles away. Does anyone wonder that, upon reading that something similar was happening to the Long Beach Federal Savings and Loan Association they hurried to get their money out while it was still in their home town and before it also went thousands of miles to some new locality, under some new management, and was merged into unknown dangers?

The wonder is that even the 50% remained, and they did so only when the Federal courts at Los Angeles commenced drastic steps to curb such highhanded confiscation.

We do not deny that the Act of Congress attempts to confer all of these powers of merger upon Fahey but we do deny that under the Constitution of the United States any act of Congress can confer these arbitrary powers upon anyone.

As to the matters concerning merger, the defect is not that the act didn't give the power but that the Constitution of the United States prohibits the existence of such powers in free America.

II.

SECTION 5-D IS UNCONSTITUTIONAL BECAUSE IT ATTEMPTS TO DELEGATE WITHOUT RESTRICTION AUTHORITY TO ENACT THE LAWS OF THE UNITED STATES.

Section 5(d) of the H. O. L. C. Act of 1933 was supplementary to, and operative only in conjunction with, the Federal Home Loan Bank Act (c. 522, 47 Stat. 725, 12 U. S. C. 1424) which was the parent Act. All of Section 5 (Subsections a-k, inclusive), was meaningless, unless read in connection with Federal Home Loan Bank Act. Section 5 is an effort to provide for a scheme for the creation of Federal Savings and Loan Associations similar to State Bldg. and Loan Associations which had existed throughout the United States for many years. Another companion act is the act providing for insurance of savings and loan accounts. (National Housing Act (Act of June 27, 1934, c. 847) (Sec. 406, 48 Stat. 1246, 12 U. S. C. 1729) which provides in Section 406(a) and (b) a complete scheme for the liquidation of insured institutions. In Section 401(d) a definition of default with reference to an Association in default is given.

On the question of delegation of power to make the laws of the United States the question to be decided by this Honorable Supreme Court is whether or not the Congress can completely abdicate or whether it must enact the laws of the United States. An effort will be made in this brief to treat the question of denial of due process and improper delegation separately because the things done by the one man "board" in denying due process would have been unconstitutional even if done by the

express language of Congress itself. As to the question of any hearing, administrative, court, or otherwise, the Act is completely silenced.

Section 5(d) is unconstitutional for both reasons:

1. Improper delegation.
2. Failure to provide for due process.

As to improper delegation it is defective because the entire law enacting power is given to the board.

In considering the validity under the United States Constitution of Section 5-D of the Home Owners' Loan Corporation Act, it is well to have the language immediately in mind. It is:

> "5(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator of a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

Not only does this language completely fail to give due process of law by requiring notice and hearing either before or after the acts authorized but it completely fails to place any limitations upon the exercise of the powers conferred. No where in the entire act is the Board (now a one-man dictator) instructed as to why, when, where or how he is to re-organize or to consolidate or to merge or to liquidate, nor what shall be the causes for which he shall appoint a conservator or a receiver. The only

restrictions upon his authority are such as he chooses to put upon himself. Congress has placed none. Under the language of this statute, he could merge an association in Long Beach, California, completely solvent and with untold millions of assets, with another completely insolvent association in Florida or New York, and such action would be within his statutory power. He could reorganize an association with a surplus of millions of dollars and merge it into another association with its capital impaired and use the surplus from the solvent association to meet the deficit from the impaired association and the depositors in neither would have any voice whatever in the matter. He could, as he has, in the Long Beach Federal matter, appoint a conservator for a completely solvent prosperous and growing association and liquidate this solvent growing association for no motive other than his own personal spite. Unquestionably his power to liquidate is unrestricted. There is nothing in the act which would prevent him from liquidating this association which has grown from $7,500.00 to $26,000,000.00 in twelve years, just as there was nothing in the act which prevented him from seizing it and putting his conservator in charge. Perhaps, it is his intention to reorganize the association. After all, a growth from $7,500.00 to $26,000,000.00 probably indicated bad management. Perhaps the conservator who lost $6,000,000.00 the first week after he took over the association, is the type of management that Fahey thinks should be in charge of the association. *At least, it is the type of management he put in charge of the Long Beach Association.* Perhaps he desires to require "*an equitable* readjustment of the capital structure."

After all, the surplus is only $1,300,000.00. Dividends have been paid every year at rates ranging from 2½% to 4% and such a surplus and growth record seem to enrage the appellants. On few, if any, occasions has the Congress of the United States completely abdicated as it has in Section 5-D. One of these instances is the N. R. A. which involves the cases of:

Schechter Poultry Co. v. U. S., 295 U. S. 495, 79 L. Ed. 1570 (Decided May 27, 1935), U. S. Supreme Court.

In which the Court said:

"Congress cannot delegate legislative power to the president to exercise an unfettered discretion to make whatever laws he thinks may be advisable for the rehabilitation and expansion of trade or industry.

. . . This Court has held that delegation may be unlawful though the act to be performed is definite and single if the necessity, *time and occasion of performance have been left in the end to the discretion of the delegate*, . . . This is delegation running riot. No such plenitude of power is susceptible of transfer. The statute however aims at nothing less as one can learn both from its terms *and from the administrative practice under it.*" (Emphasis added.)

Panama Refining Co. v. Ryan, 293 U. S. 388, 79 L. Ed. 446 (Decided January 7, 1935) U. S. Supreme Court.

The Court said:

"The Congress manifestly is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus invested.

Thus in every case in which the question has been raised the Court has recognized that there are limits

of delegation which there is no constitutional authority to transcend. We think that 9-C goes beyond those limits as to the transportation of all production in excess of state permission. *The Congress had declared no policy, has established no standard, has laid down no rule. There is no requirement, no definition of circumstances and conditions in which the transportation is to be allowed or prohibited.*

If 9-C were held valid it would be idle to pretend that anything would be left of limitations upon the power of Congress to delegate the law making function" (Emphasis added.)

The above language applied even more strongly to Section 5-D than it would to the delegation contained in the N. R. A. Act. Certainly the "necessity, time and occasion of performance" of the merger liquidation, appointment of conservator or receiver are nowhere in the Home Owners Loan Corporation Act defined by the Congress. The regulations adopted by the "Board" are not mere details. They are the very life and essence of the law itself. The Congress can not delegate to anyone (neither a five man board, nor the one man Fahey), the determination of when, why, how and for what reasons an association should be reorganized or consolidated or merged or liquidated, nor particularly why, and under what conditions a conservator or receiver should be appointed. The point is not that Congress can not, with proper safeguards, set up a system to do any or all of these things, but that Congress can not abdicate and let either a five man board or the one man Fahey pass the laws of the United States. The Assistant United States Attorney made valiant efforts to find somewhere in the Act the limitations necessary to its validity and finally said [R. 669], "We will

have to look at Section 5-D again. I cannot stretch it any further than it goes." It is interesting to watch the development of Fahey (acting as Congress) amending the laws of the United States; at one time, providing for notice to the shareholder members ten days before Fahey's Court grants a hearing and a few months later by an amendment deciding that no such notice is necessary; at one time legislating that no conservator should be appointed without notice and again a few months later deciding that such notice is unnecessary. But the most interesting legislation of all is the order granting (as a favor and condescension and not by any matter of right), a "hearing." Each order for each hearing decides what evidence will be accepted or rejected and what powers the "hearing officer" shall have. At one hearing interested parties may "petition" for leave to be heard. Apparently, at another, the commissioner might decide to hear only himself. This comment on the regulations is made in view of the language of the Supreme Court that the aim of a statute may be learned "both from its terms and from the administrative practice under it." (From *Schechter Poultry Co. v. U. S.*)

The all prevailing defect which renders unconstitutional every action under Section 5(d) is complete absence of any restrictions whatever upon the powers given. For example:

So far as anything in the Act is concerned, appellant Fahey (the board) has "full power to provide . . ." for the reorganization of a solvent, as well as insolvent, growing as well as shrinking, well managed as well as badly managed Associations throughout the United States.

Under this power he could order an Association to have one or many classes of deposits, one or many classes of voting privileges, one or many classes of obligations to its creditors; he could require it to exist as a corporation, an Association, a partnership, an individual, or any other status which might occur to him. He could require that the officers and directors be appointed by himself with no voice by those whose money and property is to be thus governed. In short he has greater power than the Congress of the United States and the legislatures of the 48 states combined. All of the salutory bankruptcy provisions of Section 77B vested in the District Courts to be exercised only after notice to the creditors and stockholders, and hearing by the bankruptcy courts, are completely vested in the one man "board" upon such conditions as he himself shall make. Under Section 5(d) he could consolidate or merge exactly as he could re-organize; he could if he wished provide that there should be but one Federal Savings and Loan Association in the entire United States with branches in all of the cities and counties of the 48 states. And he could provide that depositors in Florida should receive 1%, and those in Massasetts 10%. He could provide that deposits might be accepted throughout the United States, but withdrawals made only at Washington, D. C. What he has already done is no more fantastic than what has been here outlined.

He has liquidated, re-organized, merged and consolidated the Federal Home Loan Bank of Los Angeles and its $46,000,000 in assets into and with the Federal Home Loan Bank of Portland, Oregon and San Francisco, California, all in one day by a summary order without

hearing, without notice, without trial, and he has attempted to preclude the recourse to the courts by any of the banks or stockholders involved. The question at this stage is not, "Does this language give him that power." This, of course, must be answered, "Yes," but the question before this Honorable Supreme Court is, "Can Congress under the Constitution of the United States delegate these powers to any one?" The power to appoint a receiver or conservator or to liquidate or merge a solvent, prosperous, growing, financial institution merely at the pleasure and whim of the "board" is completely repugnant to the Constitution of the United States. The need for supervision and regulation of financial institutions in connection with the protection of the peoples' savings on one hand does not justify the creation of a destructive dictatorship imperilling the same savings in its rule or ruin policy of domination of the management of such institutions.

A solvent, growing, prosperous, liquid association is not subject to the remedies properly applied to the insolvent, mismanaged, decaying institution. Further, the powers conceded as necessary against an insolvent association are yet subject to the restrictions of due process and proper delegation. Congress itself would never have enacted any authority permitting seizure and confiscation of solvent institutions without cause, without hearing, without notice and without trial. The regulations (purportedly laws of the United States) enacted by appellant Fahey and his conduct under them, in the confiscation of the Los Angeles Bank and the attack upon the Long Beach Association demonstrates the need for the salutory rules of division of power, set up by the founders of free

America in the constitutional division between the legislative, the executive and the judicial. The division is deliberate and the fruit of the bitter experience of oppression under George III. There is little temptation for the legislative law making authority to enact excess powers in favor of the executive. There is tremendous temptation for the executive power if permitted to enact its own legislation to usurp to itself powers which it would not even remotely contemplate giving to another branch.

There is little temptation for the legislative branch through Congress to deprive the judicial branch of its power of review in favor of centralizing dangerous, autocratic authority in the executive, but there is grave danger of the executive (if given unlimited and unrestricted legislative power), denying the judicial branch of the Government all power of review and even eventually dissolving the legislative branch and denying to it even the power of repeal.

Division of power into the legislative and judicial and the executive undoubtedly is inconvenient, but the only other alternative is progressive encroachment and eventual dictatorship. As is exemplified in this case, the coupling of the executive and the legislative speedily leads to enactment by the usurping, expanding dictatorship of laws denying the judicial power as is exemplified in Federal Home Loan Bank Administrative Order Bulletin #54 [R. 361] (denying the power of U. S. Court Subpoenas) and Section 207.3 of Regulations (denying the board of directors power to do anything except petition appellants) together with the entire attitude of appellants Fahey and Ammann with their dilatory and evasive attacks upon the jurisdiction and technical proce-

dural matters throughout this case. The decision of this action will be one of the major monuments in the history of constitutional government. If Congress may under the United States Constitution simply provide an executive agency with complete powers to legislate, our traditional freedom has disappeared. Flexibility will have been obtained it is true, but at the price of freedom. It is not necessary to pay this price in order to properly protect the savings of the people. An administrative agency knowing that its actions are subject to immediate scrutiny by an impartial, unbiased Federal Court would never have dared attempt the confiscation of the Federal Home Loan Bank of Los Angeles merger and liquidation, nor would it have even contemplated the summary seizure of the solvent Long Beach Association. One safe behind the walls of constitutional guarantees completely upheld by an impartial independent, Federal judiciary little appreciates the protection he is receiving. It is only when the legislative branch becomes careless, sometimes under the pressure of a great depression, or under the compelling necessity of a world war and relaxes its vigilance and permits its powers to be usurped by the executive branch (whose nature is always to expand and always to encroach) that examples such as the Los Angeles Bank and the Long Beach Federal occur. These shocking, arbitrary acts of despotism bring into sharp focus the dangers against which our founding fathers provided in their division of governmental powers.

Assume for a moment that this Honorable Supreme Court should uphold 5(d) as constitutional, THIS WOULD BE THE LAST CASE TO COME BEFORE THIS OR ANY OTHER COURT INVOLVING FEDERAL HOME LOAN BANKS OR FED-

ERAL SAVINGS AND LOAN ASSOCIATIONS. The power of subpoena of the United States and other courts has already been denied by Federal Home Loan Bank Administrative Order Bulletin 54 [R. 361] *supra*. The right of the board of directors to make any appeal to the courts has already been denied by Regulation #207.3. All that remains is for the dictator to further utilize his then confirmed powers of legislation and enact that Congress itself cannot repeal his laws. It is interesting to observe how "flexible" has become the "procedure" under this unconstitutional delegation of legislative power. The dictator decides whether or not he will grant (as a favor) any hearing at all. At such decision he decides where the hearing is to be held. He appoints a different judge, himself or his subordinates, for each case. He makes his rules of evidence differently for each case. If he chooses, he may in one case grant the interested parties the right to "petition" for leave to be heard and in another he may deny hearing to one or grant it to another. He may accept one type of evidence from one party and reject the same evidence from another. He may waive all requirements of oath or affirmation, all privileges of cross-examination. In short his powers exceed those of an unlimited, absolute monarch. Congress itself under the "equal protection of the laws" clause of the Constitution could not do the things appellants Fahey has undertaken to do under the guise of regulations.

In Appendix "C" of Appellants' Brief, they have set forth the provisions of the laws of the State of New York, Massachusetts, California, Indiana, Ohio, New Jersey and Kentucky asserting on page 72 of their brief "The Administration has actually followed these state

rules very closely, as a comparison of Section 206.1 of its Regulations (*infra*, pp. 111-112) with the foregoing resume makes clear . . . In their entirety, the Bank Administration's list conforms very closely to the provisions of at least the New York, California, Indiana, and Massachusetts statutes." OMITTING ENTIRELY BOTH IN THEIR ARGUMENT AND IN THEIR APPENDIX PROVISIONS OF THESE SAME STATE LAWS PROVIDING FOR IMMEDIATE JUDICIAL REVIEW OF SUCH APPOINTMENTS. We have undertaken in Appendix "A" of this brief to set forth the omitted portions of the state acts, sharply curbing the apparently unrestrained power which appellants would have this Court believe those state acts conferred.

The attempt to confer upon governmental officers the untrammelled and absolute power to grant or deny, at their whim, the right of a business to exist, has been discussed by the Supreme Court of the United States in the following case:

> *Yick v. Hopkins*, 118 U. S. 356, 30 L. Ed. 227, U. S. Supreme Court (1886).
>
> "4. The order of the City and County of San Francisco, providing that it should be unlawful for any person to engage in the laundry business within the corporate limits 'without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone,' does not prescribe a rule and conditions for the regulation of the use of laundry property to which all similarly situated may conform; but it confers a naked arbitrary power upon the board to give or withhold consent, and makes all engaged in the business the tenants at will as to their means of living, under the board of supervisors . . .

"The ordinance drawn in question in the present case is of a very different character. It does not prescribe a rule and conditions for the regulation of the use of property for laundry purposes, to which all similarly situated may conform. It allows without restriction the use for such purposes of buildings of brick or stone; but, as to wooden buildings, constituting nearly all those in previous use, it divides the owners or occupiers into two classes, not having respect to their personal character and qualifications for the business, nor the situation and nature and adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from whom that consent is withheld, at their mere will and pleasure. And both classes are alike only in this: that they are tenants at will, under the supervisors, of their means of living . . .

". . . When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power . . . For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails as being the essence of slavery itself. . . .

". . . It lays down no rules by which its impartial execution can be secured or partiality and oppression prevented. It is clear that giving and enforcing these notices may, and quite likely will, bring ruin to the business of those against whom they

are directed, while others, from whom they are withheld, may be actually benefited by what is thus done to their neighbors; and, when we remember that *this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed,* it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void.

"This conclusion, and the reasoning on which it is based, are deductions from the fact of the ordinance, as to its necessary tendency and ultimate actual operation. In the present cases, we are not obliged to reason from the probable to the actual and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinance in actual operation, and the facts shown establish an administration, directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States."

The above language of the Supreme Court of the United States aptly, and pungently applies to the situation of commissioner Fahey seizing and confiscating without notice, without hearing, and with no reason except his own displeasure, banks and savings and loan associations with millions upon millions of dollars of assets and thousands upon thousands of members and depositors. As the Supreme Court said "for the very idea that one man may be compelled to hold his life or the means of living or any material right essential to the enjoyment of life at the mere will of another seems to be intolerable in any country where freedom prevails as being the essence of slavery itself."

In the *Yick Wo* case, the United States Supreme Court was considering the rights of the humble Chinese laundryman to wash the clothing of the citizens of his adopted country. Aliens and strangers were being protected against the hatred and malice of a board of supervisors. In our case, the savings of the humble (the average deposit is $1400.00), the homes of the working man (the average loan on the average home is $1500) have been made the objects of the malice and spite of those seeking to punish resistance to their complete dictatorial dominion. The cause is too grave to be answered by the "abuse of power" doctrine. If such power is allowed to exist, it will be abused. The denial of power as to solvent institutions and the requirement of due process as to even insolvent institutions is the only protection possible against a repetition upon an enormously enlarged scale of the Los Angeles Bank and the Long Beach Association confiscations. The very Congress itself, claimed by appellants Fahey and Ammann to be the source of these powers, has through its Congressional Investigating

Committee denied their existence in the following language [page 27 of Report of Select Committee to Investigate Executive Agencies, Exhibit D, Mallonee Affidavit, U. S. Supreme Court in Application to Vacate Stay]: "Your Committee questions whether the law ever contemplated that the board should have the extraordinary power to seize and appoint a conservator for a solvent institution as a part of the supervisory functions entrusted to the board over member banks."

The chronology of events leading to the two seizures is most interesting. Page 1 of the Congressional Investigating Committee's Report, *supra*, sets forth that the first complaint concerning appellant Fahey was made to the Committee on March 1, 1946. That on March 15, 1946 appellant Fahey through his examiner Thurston received a copy of a resolution adopted by the board of directors of the Federal Home Loan Bank of Los Angeles appropriating money for expenses and for counsel fees for the hearing to be held before the Congressional Investigating Committee.

That such resolution was received on March 18, 1946 in Washington, D. C., on March 25, 1946, one week after receipt of knowledge that the Federal Home Loan Bank of Los Angeles was appropriating funds for counsel for action before the Congressional Investigating Committee, appellant Fahey, the one man "board," enacted Bulletin 54 amending Section 7.3 denying the powers of subpoena of all courts, including the courts of the United States, and four days later, the Federal Home Loan Bank of Los Angeles was summarily liquidated and dissolved.

On May 8, 1946 the board of directors of the Long Beach Federal Savings and Loan Association made an

appropriation to defend the Association against the fate which had overtaken the Los Angeles Bank. On May 20, the conservator was appointed by the appellant Fahey for the Long Beach Federal Savings and Loan Association. The terroristic tactics against the Los Angeles Bank had not silenced the protests and it was necessary to repeat them against the Long Beach Association.

The Los Angeles Bank lived but two weeks after it appropriated funds for counsel to present its complaints to the Congressional Investigating Committee. The Long Beach Association lived but twelve days after it adopted a resolution appropriating funds for counsel to protect it, the association, from Fahey's destruction. The example to be observed by all other subjects of Fahey's dominion (The Federal Savings and Loan Associations throughout the United States) is plain, if you appropriate money to appeal to the courts or to Congress for protection, you will be liquidated the instant that appropriation is discovered.

Like the Boston Tea Party, the acts of terror stiffened the resistance of the oppressed rather than compelling obedience. On June 12, 1946, the Congressional Investigating Committee commenced its hearings. On July 15, 1946, the three judge statutory court at Los Angeles conducted its hearing. The remaining all important date yet to be filled in is the date of the opinion by this Honorable United States Supreme Court. Will the decision travel the road of freedom and upholding of the protection of the Constitution? Or will it travel the road of the dictators and uphold the power of a servant of the people to deny to the people the access to the courts for redress of wrongs a servant has committed against them?

III.

THE DISTRICT COURT, WHETHER ONE JUDGE OR THREE JUDGES, HAD JURISDICTION IN REM OF THE $26,000,000 IN ASSETS.

III-A.

The District Court Had Jurisdiction Under Title 28, Section 118, U. S. C.

Defendants Fahey and Ammann instead of meeting the issues squarely presented them by the complaint of plaintiffs and the cross-claim of the Long Beach Federal Savings and Loan Association chose to try to avoid these unpleasant issues by an attack upon the jurisdiction either the one judge or the three judge district courts of Los Angeles, California. Basis for such attack is difficult to comprehend. The defendant Ammann physically within boundaries of the court, served with process therein, and physically in possession of $26,000,000 in assets seized by him within the boundaries of the court of which assets be still in possession, and still within the boundaries of this court, vehemently contends that despite all these facts the court has no jurisdiction of him, Ammann; and the defendant Fahey is even more insistent that the court has no jurisdiction over either his cohort Ammann or himself, Fahey. Fahey was served with process but not within the boundaries of the court, however the $26,000,000 in assets were subject, both at the time of the commencement of action and at the time of enforcement of the judgment, to the power of the court. The nature of these assets is set forth in detail in the cross-claim of the defendant Long Beach Federal Savings and Loan Association. [R. 197.]

These allegations are undenied and of course, are undeniable. Briefly, the nature of the assets was, first: The real property (premises of the association) physically situated in the City of Long Beach, County of Los Angeles, State of California. Second, approximately $10,000,000 of United States Government bonds owned by the association and all physically situated within the County of Los Angeles, and State of California, some in the premises of the association, millions more in the custody of various banks, all in the County of Los Angeles, State of California. Third, approximately $12,000,000 consisting of approximately 8000 notes PAYABLE AT THE OFFICES OF THE ASSOCIATION, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, executed by makers and borrowers, all residents of the County of Los Angeles, State of California, secured by deeds of trust conveying real property all physically located within the County of Los Angeles, State of California to a trustee under said deeds of trust whose principal place of business and place of organization was within the County of Los Angeles, State of California. [R. 197.]

The physical evidence of these assets, the pieces of paper such as notes, deeds of trust, Government bonds, and other security were also within the County of Los Angeles, State of California at the time of such seizure, the time of the commencement of the action, and, unless wrongfully removed by these defendants Fahey and Ammann are still within said County of Los Angeles, State of California.

The action as disclosed by the plaintiffs' complaint and the Long Beach Federal Savings and Loan Association's

cross-claim is a proceeding *in rem* to recover the physical possession of these purely local assets from the possession of defendants who are alleged to have wrongfully trespassed upon, and seized possession of, them. The action as shown by the complaint and the cross-claim also seeks the determination of the title to the seized assets as either belonging to Fahey and Ammann, or to the association and its shareholders, and also seeks the removal of the clouds, the encumbrances and liens upon the title to such assets caused by the unconstitutional order appointing Ammann as conservator and his wrongful seizure of their possession purportedly under said order. The real contention of the defendants Fahey and Ammann is of course that they are beyond the reach of all courts. They have not indicated any court in which they think they could be sued. But there is only one other possible court, which would be the District Court of Washington, D. C. Assume for an instant this action had been brought there. What would the District Courts of Washington, D. C., do to effect a title to 8000 homes in Los Angeles County? Security for 8000 notes and deeds of trust payable at the home office of the Association in Long Beach, County of Los Angeles, State of California? Ammann in possession of all this property and in addition in possession of the $10,000,000 in government bonds is clearly beyond the reach of the Washington, D. C. courts. Process served on him in a personal action (which is the only act which could be filed in Washington, D. C.) cannot reach 3000 miles to Long Beach, California. Fahey, if he happened to be found in the District of Columbia, might be served there, but what effect would this have on the $26,000,000 in Long Beach, California, in the hands of Ammann? The jurisdiction *in rem* to determine title to

and possession of, these assets, if not in Los Angeles County, California, can rest nowhere.

Fahey and Ammann claim to exercise this power (unconstitutionally given to them by the void act of Congress) to confiscate, merge, and interfere with, the homes and savings of all individuals unfortunate enough to be connected with Federal Savings and Loan Associations throughout the states. Must the citizens from Maine to California, from Florida to the State of Washington all suffer these invasions at the will of Fahey thousands of miles away in Washington, D. C., and be completely without recourse to the local Federal courts vested with jurisdiction under Title 28, Section 41, Subd. 26 and also Section 118, U. S. C.?

The decisions in the following cases fully sustain jurisdiction of the District Court in this, the Long Beach Federal Savings and Loan Association case.

A case exactly in point is:

> *Commonwealth Trust Co. v. Reconstruction Finance Corp.*, 28 Fed. Supp. 586, District Court, W. D. Pennsylvania, 1939.

We quote from the opinion:

> "(1-3) We shall first consider the objection made to the jurisdiction of this court. Defendant contends that as a corporation under the laws of the United States, all of whose capital is owned by the United States, and whose principal office is located in the District of Columbia, it is not suable in this District. These facts appear in the statute creating this corporation. See 15 U. S. C. A. Secs. 601, 602.

The General venue statute of the District Court is set forth in 28 U. S. C. A. Sec. 112. This statute provides: ". . . and except as provided in sections 113 to 118 of this title, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant. . . ."

Of the exceptions noted in this statute, the only one, pertinent to the present case is 28 U. S. C. A. Sec. 116, which confers venue of a local action upon the court within whose district property is located which is sought to be recovered. In our opinion, the facts pleaded would bring this action within the statute. The plaintiff is trustee of the bankrupt estate of the Colonial Iron Company now being administered in this court. Through the custody of its agent in this District, the defendant is in possession of 4,896.38 tons of pig iron located on land in this District leased to defendant by the Colonial Iron Company. The complaint alleges that the pig iron was transferred to defendant by the Colonial Iron Company, while insolvent, under a secret pledge agreement, as security for a debt contracted at the time the pledge agreement was entered into; that this transfer was fraudulent and void, being intended to give defendant a preference over other creditors of the Colonial Iron Company; that the attempted pledge by the Colonial Iron Company of its future output of pig iron was unauthorized by the laws of Pennsylvania; that the pig iron now in controversy in this suit was not in existence at the time the pledge

agreement was made, but was all manufactured subsequent thereto, and is a part of the assets of the bankrupt's estate to which the plaintiff is entitled; that proofs of claim have been filed in the bankruptcy proceeding by creditors whose claims arose subsequently to the date of the execution of the pledge agreement, but prior to the date of the transfer of the pig iron in question to the defendant.

Therefore these facts make plain that the action is local in its nature, and is for the recovery of specific personal property located in this district. True, the complaint does not say in so many words that plaintiff has made demand on defendant for delivery of this pig iron to plaintiff, and over the defendant refused to deliver; but this suit is certainly a demand and the defendant by its defense is certainly resisting the demand.

These facts pleaded, assuming that they are true presents a case entitling plaintiff to relief, *i. e.*, the return to the plaintiff of the pig iron, or its value.

The defendant contends that this action cannot be considered as a local action for the recovery of personal property because the plaintiff has not proceeded by the appropriate action of replevin. This position is no longer tenable under the new Rules of Civil Procedure, by which a party may sue on all claims 'either legal or equitable or both as he may have against an opposing party' and subject to the proviso that 'the court shall grant relief . . . only in accordance with the relative substantive rights of the parties.' See Rule 18. Then, too, under Rule 64 either at the time of the commencement of, or during the course of an action, all remedies provided by state laws for the seizure of property are available. Among the remedies thus available are replevin,

which may be proceeded with regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.' Therefore, it is of no importance at the present time to consider whether the plaintiff's remedy is by replevin, to cover money had and received, or trespass. The real question is whether, under the facts disclosed in the complaint, the plaintiff is entitled to relief. If he is the court can apply the proper remedy, for Rule 54 (c) provides: '. . . Except as to a party against whom a judgment is entered by default every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

The property involved in this law-suit is located in this District. It is in the possession of the defendant through its authorized agent. The plaintiff claims he is entitled to this property. We therefore hold the defendant is suable in this District in an action to recover it. If we find the plaintiff is entitled to it, we may then apply the proper remedy as authorized by the new Federal Rules of Civil Procedure. (4) As to the other ground of dismissal, *i. e.*, that the complaint fails to state a claim on which relief can be granted, it is without merit. As we have already stated the complaint states the defendant is in possession of pig iron to which the plaintiff is entitled. It also sets forth the claim of title, which the defendant asserts and avers is fraudulent and void as against the plaintiff.

Assuming all this to be true, the complaint presents a claim on which relief may be granted. We shall not at this time enter into a discussion as to the merits of the plaintiff's claim, believing the de-

fendant may desire to answer the complaint on the merits. We can then pass on the entire controversy. An order may be submitted denying defendant's motion to dismiss, and allowing defendant ten days in which to file an answer to the complaint."

Another case in point is:

Omaha Nat. Bank of Omaha, Neb. v. Federal Reserve Bank of Kansas City, Mo., et al., 26 F. (2d) 884, Circuit Court of Appeals, Eight Circuit, 1928.

We quote:

"(1) This suit was brought under section 118, titl. 27, U. S. C. A. (Judicial Code paragraph 57), by the Omaha National Bank of Omaha, Nebraska, against Federal Reserve Bank of Kansas City, Missouri, Wyoming National Bank of Casper, Wyoming, First National Bank of Cheyenne, Wyoming, and T. E. McClintock, receiver of the First National Bank of Cheyenne, Wyoming, and was dismissed on the ground that the court was without jurisdiction. That section deals with local actions or suits, and there are two indispensable requirements to give the court jurisdiction: (1) The complaint must show that the subject-matter, the res, is within the territorial jurisdiction of the court, and (2) there must be diverse citizenship and residence between the plaintiff and all defendants who are necessary parties; and it does not matter that plaintiff is or is not a citizen and resident of the State in which the suit is brought. Its purpose is to enable him to obtain a judgment or decree that will bind the res, though the defendants are all nonresidents and cannot be personally bound un-

less they enter general appearance or should be served within the district. . . .

The allegations of the bill of complaint in reference to the property involved, its situs, and the basic of plaintiff's equitable claim thereto are in substance as follows: Plaintiff sues to enforce an equitable title and claim to a credit or funds on deposit in the Omaha Branch at Omaha, Nebraska, of Federal Reserve Bank of Kansas City, Missouri; about July 7, 1924, plaintiff received through the mail from the First National Bank of Cheyenne two drafts each for the sum of $50,000.00, drawn by said Bank of Cheyenne, on the First National Bank of Boston, Mass., for deposit to the credit of the drawer, subject, however, to final payment; thereafter on that day, and after banking hours, plaintiff received a telegraphic dispatch from said Bank of Cheyenne requesting that plaintiff transfer the sum of $60,000, from the credit created by said two unpaid drafts to the credit of Wyoming National Bank of Casper in the Federal Reserve Bank of Kansas City, Missouri, Omaha Branch; on the opening of said Federal Reserve Bank, Omaha Branch, on the next day, July 8, 1924, plaintiff pursuant to said telegraphic request caused the sum of $60,000 to be debited by said Federal Reserve Bank to plaintiff's account and a like sum credited in said bank to the said Wyoming National Bank of Casper, and said sum of $60,000 so transferred now stands as a credit on the books of defendant Federal Reserve Bank as a deposit and credit in favor of said Wyoming National Bank and is a charge and debit to the account of plaintiff; . . .

(5) Impliedly conceding, for sake of argument, all that has been said, it is contended that the facts pleaded show only a paper transaction, which did

not create or bring under the court's jurisdiction any personal property within the meaning of section 118, that the section contemplates some specific tangible thing; that here no money passed, no particular fund was created, only book entries were made at plaintiff's direction in the Omaha Branch Bank, and there is no res in the State and district of Nebraska which can be adjudged upon and disposed of by the court. It would be hard to convince men who devote their time to business and financial transactions that there is any merit in the contention. As proof to the contrary, and as a matter of common knowledge, the $60,000 will be handed over at the Branch bank's counter on proper orders to him who is entitled to it. In every practical and business sense the $60,000 is there, and it is a sacrifice of substance to form to say it is not. For remedial purposes on plaintiff's bill we think the situs of any property interest in the transferred deposit was at Omaha. In C. R. I. & P. Ry. Co. v. Sturm, 174 U. S. 710, 19 S. Ct. 797, 43 L. Ed. 1144, it was held for purposes of levy by garnishment that the situs of a debt was with the debtor. The court said:

> 'This is a legal necessity, and considerations of situs are somewhat artificial. If not artificial, whatever of substance there is must be with the debitor. He and he only has something in his hands. That something is the res, and gives character to the action as one in the nature of a proceeding in rem. . . . Of course, the debt is the property of the creditor, and because it is, the law seeks to subject it, as it does other

property, to the payment of his creditors. If it can be done in any other way than by process against and jurisdiction of his debtor, that way does not occur to us.'

The same proposition is learnedly discussed and a like conclusion reached in McBee v. Purcell Nat. Bank, 1 Ind. T. 288, 37 S. W. 53. Corporate shares represent the owner's right to a pro rata interest in corporate assets that may never be parceled among shareholders. The right as property, though intangible, is real, and is personal property within the purpose and meaning of this section, Jellenik v. Huron Copper Mining Co., 177 U. S. 1, 20 S. Ct. 559, 44 L. Ed. 647. It was there said, on the contention that the statutes had reference only to tangible personal property; 'This would be too narrow an interpretation of the statute.' See also Citizens' Sav. & Tr. Co. v. Ill. Cent. R. R. Co., 205 U. S. 46, 27 S. Ct. 425, 51 L. Ed. 703; Franz v. Ruder (C. C. A.) 11 F. (2d) 854; Norris v. Lohman (C. C. A.), 16 F. (2d) 355. In Goodman v. Niblack, 108 U. S. 556, 26 L. Ed. 229, an assignment was made by a debtor of all of his property for the benefit of his creditors. The assigner had a half-interest in a contract which proved to be profitable, and after his death his share was paid to his administrator, Niblack. Goodman, a judgment creditor of the assignor, the sued Niblack, pursuant to the terms of this section as it stood prior to the amendment of March 3, 1875, seeking to follow the money paid to Niblack as a trust fund out of which his judgment should be satisfied. In holding that the suit was maintainable Mr. Justice Miller, speaking for the court, said of this section:

'This is a proceeding in equity to enforce a lien on the fund which is within reach of the

court, and as the trustee and complainant have the requisite citizenship, section 738 of the Revised Statutes (28 U. S. C. A. paragraph 118) provides a remedy for inability to serve process by an order of publication. If they appear, the suit will proceed as usual. If they do not appear, the decree, so far as it affects the fund in the hands of Niblack, will bind them; and this is all that is necessary to give the court jurisdiction to grant relief prayed for by the complainant . . .'

. . . Accepting the allegations as stating the true facts, we think the $60,000 transferred to the credit of Wyoming National Bank in the Omaha Branch Bank was personal property within the court's jurisdiction, to which plaintiff asserted an equitable claim and title, and in that respect the suit was one properly brought under section 118 U. S. C. A. . . .

. . . We think the pleadings clearly show diverse citizenship between plaintiff and all defendants. In respect to parties also the bill stated a case within the requirements of section 118. Stockyards National Bank v. Bragg *et al.* (C. C. A.), 293 F. 879."

This case expressly holds that a debt, that is a bank deposit, is properly situated at the place of residence of the debtor. The uncontradicted allegations of the plaintiff's Complaint and the Cross-Claim of defendant, Long Beach Federal, show the existence of $12,000,000.00 worth of such debts, that is, promissory notes made by residents of the County of Los Angeles, payable at the office of the Association in Long Beach, Los Angeles County, California, secured by the conveyance of the legal title to 8,000 separate parcels of real property, situated in the

County of Los Angeles, State of California, and all of which notes, deed of trust and real property are physically within the jurisdiction of this Honorable Court. To claim that such an action is not local is fantastic.

Defendants Fahey and Ammann claim that they have not "cast a cloud" upon any title, but it would be very difficult to so convince the Home Investment Co., intervenor in this action, who has been struggling for weeks to clear the title to several million dollars' worth of property owned by it, upon which $800,000.00 worth of deeds of trust in favor of Long Beach Federal were seized by the defendants Fahey and Ammann. The court need but refer to the record on this subject (intervention of Home Investment Co.) [R. 247] for proof of whether or not the $12,000,000.00 worth of deeds of trust and the titles conveyed by them are clouded, encumbered or impaired.

Other cases dealing with the situs of property as being where a debtor resides or where the owner of said property is domiciled and the application of Section 118, are:

McQuillan v. National Cash Register Co., 12 F. (2d) 877;

Jellenik v. Huron Copper Mining Co., 177 U. S. 1, 44 L. Ed. 647;

Spellman v. Sullivan, 43 F. (2d) 762 (Dist. Court N. Y., 1930);

Bede Steam Shipping Co., etc. v. N. Y. Trust Co., 54 F. (2d) 658 (D. C. N. Y., 1931).

In view of the liberalized proceedings under the new Federal Rules of Civil Procedure and the statement contained in the case of:

Commonwealth v. Reconstruction Finance Co., 228 Fed. Supp. 586 (quoted at length, *supra*):

> "Therefore it is of no importance at the present time to consider whether the plaintiffs' remedy is by replevin, trover, money had and received or trespass. THE REAL QUESTION IS WHETHER UNDER THE FACTS DISCLOSED IN THE COMPLAINT, THIS PLAINTIFF IS ENTITLED TO RELIEF. If he is the Court can apply the proper remedy. For rule 54-c provides . . . every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." (Emphasis added.)

Clearly the defendant Long Beach Federal, under its Cross-Claim, is entitled to the return of its $26,000,000.00 worth of property. Plaintiffs as members of said Association are entitled to the same relief and the Court within whose jurisdiction said property is situated can grant such relief.

Section 118 is to be liberally construed so that a Court having jurisdiction of the *res* may, in an action *in rem*, acquire jurisdiction of absent defendants, so as to proceed against the property physically within the power of the Court. It is to be liberally construed as is held by the case of

Consolidated Interstate Callahan Mining Co. v. Callahan Mining Co., et al., 228 Fed. Supp. 528, District Court, D. Idaho, N. D., 1915.

". . . (2) Turning now to the real question, does the issue between the plaintiff and the defendant company involve a 'claim' to real or personal property, within the meaning of the statutory provision quoted? It will be borne in mind that the primary purpose of the statute was to enable federal courts to acquire jurisdiction of the persons of nonresident parties whose presence might be necessary to an adjudication of local actions touching the statute of property within the district, in cases depending for federal jurisdiction upon diversity of citizenship. By implication it has been held to create an exception to the statutory rule, applicable to this general class of cases, requiring that they be brought in the district of the residence of one of the parties. Now, when we consider its primary purpose and the comprehensive terms in which it is couched, I am inclined to think it should receive a liberal construction, with a view to giving effect to the legislative intent. *Otherwise, a party having a local cause of action clearly falling within federal jurisdiction could not prosecute it in a federal court, for the reason that he could not bring his adversary into the only court having jurisdiction of the subject-matter.* Logically it follows that in considering its secondary purpose it must have the same construction. It is as broad for one purpose as it is for the other. In every case where it authorizes the constructive service of process it necessarily operates to create an exception to the general rule of the venue of actions. If, therefore, the issue between the plaintiffs and the defendants affects real or personal property within this district, and involves

the status thereof in such a manner that if the defendant could not be found in the district, it could be proceeded against upon constructive service, then the objection to the venue is without merit. . . ." (Emphasis added.)

In their desperate efforts to avoid justifying themselves before an impartial court, Fahey and Ammann attempt to deny even the jurisdiction of the Interpleader laws contained in Title 28, Section 41, Subd. 26, U. S. C., in Rule 22, Rules of Civil Procedure for Districts Courts of the U. S., and in the general equity powers of U. S. District Courts. They are even willing to forfeit nearly $1,000,000 of the depositors' money in the Registry of the United States District Court at Los Angeles, California.

Assume for a moment that their Motion to Dismiss was granted. The only thing that the court could then do with the money on deposit in the Registry is order it returned to those who had deposited it. To say that the court has not jurisdiction over money physically in its Registry is a contradiction in terms. The truth of the matter is that faced with the unpleasant choice of either answering the Summons of the court and setting forth their case before an impartial tribunal or forfeiting the shareholders' rights in the money deposited, the conservator Ammann and his superior Fahey, chose to forfeit. Probably they hope, through some of the same logic and reasoning with which they confiscate and appoint a conservator for a solvent, prosperous Association with $26,000,000 in assets and a $1,300,000 surplus, to collect the million dollars from the Registry of the court without letting the court decide the ownership of the money. They are equally indifferent to the fate of the 8000 home own-

ers who have transferred title to their homes to secure the payment of $12,000,000 in notes and deeds of trust payable to the Association and seized by the defendants Fahey and Ammann. They continue to collect the payments from the home owners, in fact, *to accept payment in full* from all those gullible enough to part with their money, *well knowing that they, Fahey and Ammann, are unable to* give borrower a clear title or an effectual release *of his home except through the aid of the very court whose jurisdiction they attack,* in proceedings which they are asking this Supreme Court to dismiss.

Suppose the action was dismissed. Fahey and Ammann will continue to collect the payments from the home owners, Title Service Company of necessity must continue to refuse reconveyances on the request of Fahey and Ammann, what then happens to the innocent home owners? The only way to compel Title Service Company to make reconveyance is to go to a court, State or Federal, having jurisdiction of the real property to which title is involved and only courts, either State or Federal, within the County of Los Angeles, State of California, can have such jurisdiction. If this action is dismissed, either the innocent home owners (whose average loan is approximately $1500) or the defendants Fahey and Ammann themselves must again go to court (and if the Federal courts are held not to have jurisdiction, the only remaining courts are those of the State of California), commence a new action wherein either the home owners or Ammann claim that Ammann has authority and the Title Service Company is wrongfully refusing to recon-

vey, and relitigate the very question now presented to this Honorable Supreme Court of the United States, through all the intermediate State courts of California, to the California Supreme Court and finally again to the Honorable United States Supreme Court for final determination of the question arising under the laws of the United States, the validity of Act of Congress, Section 5(d) of the Home Owners Loan Act. To assert that United States District Court created by Congress to determine questions arising under the laws of the United States which questions concerning the title to real property of 8000 homes within the jurisdiction of these same United States District Courts are without the power to decide such questions, is an unbelievably absurd contention. It is a part of the same claim of immunity from all courts exemplified by defendants Fahey and Ammann's conduct of both the Los Angeles bank and the Long Beach Federal confiscation. Defendants Fahey and Ammann assert that the conservator has not title to the property. But in the defendant Ammann's affidavit filed with this Honorable Supreme Court re Stay hearing at page 4, under oath he states that he *sold* $7,385,093.75 worth of United States Government Bonds belonging to said Association.

The affidavit of G. A. Walker, President of the Farmers & Merchants Bank of Long Beach [R. 397] discloses that the defendant Ammann has withdrawn from the bank account of the Long Beach Federal Savings and Loan Association, $1,566,000. Over $10,000,000 has

been paid out by defendants Fahey and Ammann to depositors of said Association withdrawing their funds in the run following the appointment of Ammann as conservator. The distinction attempted by appellants between conservator and receiver is one of their own making.

U. S. C. Title 12, Section 203 (cited by appellants), is part of the Bank Conservation Act enacted during the bank holiday in March of 1933. The Section itself provides, "During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto, shall, subject to the other provisions of this sub-chapter *be the same as if a receiver had been appointed therefor.*" (Emphasis added.)

The very case that they cite:

Smith v. Witherall, 102 F. (2d) 638, U. S. C. C. of App., 3d Cir.,

says, referring to conservators, "His appointment was the equivalent of the appointment of a receiver of a corporation with leave to continue the business and quite similar to the appointment of a trustee in the proceeding for the reorganization of a corporation under the Bankruptcy Act."

Defendants Fahey and Ammann deliberately overlook the very heart of the complaint of all appellees, which is the malicious use of powers which could apply only to insolvent institutions for the intentional destruction of solvent, prosperous, growing institution with a $1,300,-

000 surplus. At the risk of repetition we repeat, no case having to do with insolvency, bankruptcy, involuntary liquidation, or re-organization, of defaulting or endangered financial institutions, can have any application to this the Long Beach Federal Savings and Loan Association or to the Los Angeles Bank case. In *Smith v. Witherall*, by voluntary action of the directors of the bank, it had refused to honor withdrawals of its depositors, the court said:

> "In the present case the bank voluntarily closed its doors to its then existing depositors on February 20, 1933, and it never re-opened them. From that date it declined to meet its obligations and it never did meet them, consequently, it must have been held to be insolvent from that date . . ."

A case dealing with the appointment of a conservator for an insolvent institution declining to meet the withdrawals of its depositors has no application to the appointment of a conservator for an Association whose solvency was never in question and which had grown by nearly one-half a million dollars in deposits in the last month before its confiscation.

On page 49 of their brief, defendants Fahey and Ammann state:

> "It is apparent from the statute and the regulations that a duly appointed conservator, unlike a receiver, does not take title to the Association or its assets, see regulations Sec. 206.4.

There has, therefore, been no change in title, ownership, *or possession of property.*" (Emphasis added.)

No change in possession of property, but Ammann did not talk this way when he signed his own order appointing himself conservator.

"Whereas, it has been determined . . . to appoint a conservator to take possession of said Association, . . . Now, therefore, A. V. Ammann is hereby appointed conservator . . . *to take possession of said Association.*

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on May 20, 1946.

A. V. AMMANN,
Assistant Secretary."

[R. 220.] (Emphasis added.)

If the conservator did not take possession, there was no need for such appointment. The decree [R. 498],

"That the said officers of the Long Beach Federal Savings and Loan Association be forthwith restored to and placed in full possession of . . . said Association and that the said defendants Fahey and Ammann . . . are hereby ordered to deliver, return, . . . *title, control and possession* of any and all property . . . owned by the Long Beach Federal Savings and Loan Association" (Emphasis added),

need not have been stayed.

When obtaining the Stay Order from Honorable Justice Rutledge, defendants Fahey and Ammann thought the action involved possession enough to provide in said Order that "If the said directors have already taken possession of said Long Beach Federal Savings and Loan Association, that the conservator A. V. Ammann *be placed back in possession forthwith.*" (Emphasis added.)

Have the defendants forgotten in April a Stay Order obtained by themselves in October without notice to the Asssociation appellee and by virtue of which they are yet *in possession* of the Association's assets and business?

Not only the specific provisions of the sections of the United States Code, but the equitable doctrine of doing full justice in one action, requires that the United States District Court which decides the title to the 8000 homes, the possession of the $26,000,000 in assets, the ownership of the savings of the 16,000 depositors should also decide and determine the entire action and all matters connected with it. Any other determination would result in not merely hundreds but thousands of separate litigations either in the courts of the State of California or in the District of Columbia.

Defendants Fahey and Ammann, supposedly public servants claiming to act for the public good, called into United States District Court to justify their action vitally affecting the small savings and the homes of 24,000 families in the County of Los Angeles, State of California,

do not exhibit the high fidelity and good faith required of public officials, by seeking to void responsibility for their acts in the locality in which those acts were committed. What benefit should the 24,000 citizens of California receive from re-litigating the same questions in the District of Columbia, Fahey's so-called residence?

This litigation is not between the management and the board of directors and Fahey [redacted] is between the 24,000 families who own the money, and property that Fahey and Ammann have seized, the shareholders and the home owners on one hand, and Fahey and Ammann on the other. The very doctrines urged by Fahey and Ammann for the existence of the power which they claim, that is, the protection of the savings and homes of the borrowers and depositors, also require that a speedy remedy by a fair and impartial court be instantly and conveniently available to check the unconstitutional encroachments of that power exercised malliciously against a solvent, prosperous, growing Association of home owners and small investors. It may be simple enough for a huge monopoly stretching across the nation to present its appeals for justice in Washington, D.C., but to require the 24,000 Long Beach home owners and savings depositors to journey the 3000 miles to Washington in their efforts to secure justice from the encroachments of Fahey and Ammann, who should be protecting and not destroying this Association is a complete denial of justice to those most entitled to the protection of the United States Courts.

III-B.

The District Court Had Jurisdiction Under Interpleader Under Title 28, Section 41, Subd. 46, U. S. C., Also General Equity Interpleader Powers, Also Under Rule 22, Rules of Civil Procedure for District Court of the United States.

The assertion that the defendant Fahey can physically invade through his agents and subordinates the premises owned by the Association, real property in the City of Long Beach, State of California, and by such invasion physically seize possession of over $26,000,000 in assets, $12,000,000 of which are deeds of trust conveying title to 8000 homes situated in the County of Los Angeles, State of California, withdraw bank accounts of millions of dollars, sell million of dollars of Government bonds thus seized, transfer the titles to hundreds of homes, in release of payment of millions of dollars of deeds of trust, pay out over $10,000,000 of Association assets in the run caused by the appointment of the conservator and yet be completely beyond the jurisdiction and immune from the process of the United States District Courts within whose boundaries all of these acts take place and all of this property is situated, is completely illogical. The equity doctrine of Interpleader of the Federal Interpleader Acts set forth in Title 28, Section 41, Subdivision 26, U. S. C., also set forth in Rule 22 of the Rules of Civil Procedure for the District Courts of the United States and the General Equity Powers of Interpleader, all concur in seeking a speedy final determination in one action of many conflicting claims and demands. In furtherance of this purpose: Title 28, Section 41, Subd. 26(c) U. S. C., provides, "Process shall run throughout the United States."

Defendant Ammann, the same time that he was claiming to be immune from process and beyond the jurisdiction in the United States district courts at Los Angeles, California, was attempting to convey millions upon millions of assets of the Long Beach Federal Savings and Loan Association within the boundaries of the Federal district court at Los Angeles, and to make such conveyance while himself within the boundaries of that court. The Home Investment Company, a California corporation, owning property covered by 174 of the 8000 deeds of trust attempted to pay off its obligation to the Long Beach Federal Savings and Loan Association and the defendant Ammann tendered said 174 notes and deeds of trust to the trustee named therein, the Title Service Company with his, defendant Ammann's, request that the Title Service Company reconvey the legal title to the 174 parcels of real property all situated in the County of Los Angeles, State of California. The Title Service Company being unfamiliar with Ammann as having any authority to deal with the assets of the Long Beach Federal Savings and Loan Association, inquired of the officers and directors of said association as to the validity of Ammann's dealings with the association's property and was advised by said officers and directors that if it reconveyed the legal titles to these properties the Title Service Company would do so at its peril.

Very shortly thereafter, Title Service Company was served as a defendant with a copy of the original summons and complaint of plaintiffs. Faced with this situation defendant Title Service Company filed its cross-claim in Interpleader in the Federal Court of Los Angeles, California and deposited therein in the registry of said court;

174 original notes and deeds of trust. Home Investment Co. still seeking to pay off its loans intervened in the Federal Court action in Los Angeles, and deposited approximately $800,000 with the registry of the Federal Court of Los Angeles and asked the court to allow the money to be substituted for the real property, security for the 174 notes and deeds of trust and to require a reconveyance of Title Service Company as trustee. This District Court of Los Angeles did. Dozens of other homee owners have intervened similarly and deposited the amounts of their obligations with the registry of the Federal Court. The original notes and deeds of trust have also been deposited with the registry and the real property involved reconveyed. Title Service Company in addition to physically depositing the 174 notes and deeds of trust also, by its bill in nature of interpleader, placed within the jurisdiction of the District Court at Los Angeles, the approximate $12,000,000 in value of additional notes and deeds of trust conveying the title to 8000 parcels of real property, all as more fully herein before set forth, payable within, situated within, the trustee within, and the borrower's residence within, the County of Los Angeles, State of California, and yet defendant Fahey and Ammann insist that the District Court at Los Angeles, California, is without jurisdiction to determine the ownership and title to those enormous amounts of property physically within the registry of the court itself.

The interpleader statutes of the United States are, of course, otherwise.

Both venue and jurisdiction upon such interpleader are nationwide; Title 28, Section 41, Subdivision 26-c of U. S. Code, reads as follows:

> "(c) Notwithstanding any prevision of Part I of this Title to the contrary, said Court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State Court ~~or~~ in any U. S. Court on account of such money or property or on such instrument or obligation until the further order of the Court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the U. S. Marshall for the respective districts wherein said claimants reside or may be found."

If this Honorable Supreme Court should hold that the district courts of Los Angeles, California does not have jurisdiction under these circumstances the 8000 borrowers unable to clear the title to their homes, tangled and encumbered by Fahey and Ammann, are helpless indeed.

These interpleader proceedings are entirely independent of the main action and will support it, even if the main action fails. This is exemplified in the case of:

Railway Express v. Jones, 106 F. (2d) 341 (1939) (Circuit Court of Appeal, Seventh Circuit).

This was originally a class action brought by plaintiff Jones on behalf of himself and of numerous other victims of a swindle. All of the individual losses have been less than $500.00 each, but the total of all losses exceeded $24,000.00. The Collector of Internal Revenue asserted claim to the $24,000.00 for non-payment of income tax by de-

fendants who were perpetrators of the fraud. Railway Express had the $24,000.00 in its possession and moved to file its counterclaim in the nature of interpleader. The trial court denied the motion. The Circuit Court of Appeal reversed and ordered the interpleader to be allowed.

The opinion said:

> "The Railway Express Co.'s right to file its interpleader is not established nor defeated by the merits of plaintiff's claim. . . . Where the possessor of funds can establish the essential and jurisdictional facts prescribed in the statute, his right to relief under this section is absolute.
>
> "By proceeding under the counter-claim of Railway Express, the jurisdiction of the court will be unassailable and the claims of all claimants may be litigated exactly the same as in a proper class suit."

In another case none of the claimants to the fund interpleaded were found to be entitled to any part of it, notwithstanding which the interpleader was held entirely proper. The case is:

> *McGraw etc. v. Sherman Plastering Co.*, 60 Fed. Supp. 504, U. S. District Court, 1943.
>
> "INTERPLEADER, KEY No. 30.
>
> "A general contractor's complaint in interpleader action was not dismissible under Federal Interpleader Act as liberalized by federal rule, notwithstanding in outcome none of defendants was entitled to specific fund in court, where complaint alleged facts showing that general contractor was exposed to hazard of multiple claims under subcontract, and subcontractor's materialmen by their counter-claims brought issues involved under general contractor's bond into the

case. Judicial Code, paragraph 24 (26), 28 U. S. C. A. paragraph 41 (26); Federal Rules of Civil Procedure, rules 12(b), 22, 28 U. S. C. A. following section 723c. . . .

"Altogether I am satisfied that McGraw was subject to multiple liabilities and that the case is within the scope of the Federal Interpleader Act, 28 U. S. C. A. paragraph 41 (26), as liberalized by Federal Rules of Civil Procedure, rule 22, even though in the outcome, Sherman having suffered a default, I find none of the defendants entitled to the specific fund in court."

Defendant Fahey guilefully pleads to this court that he can be sued only in the District of Columbia well knowing that if this action is the Federal Courts in California be dismissed, the District of Columbia Federal Courts will have no jurisdiction over the 8,000 parcels of real property or over the $26,000,000.00 in assets. Defendant Ammann will of course remain in California and claim immunity from the process of the District of Columbia Courts even as Fahey is now claiming immunity from the process of the California Federal Courts. The District of Columbia Courts would have before them only Fahey, and Fahey and Ammann have, as alleged in the Third Party Complaint of Long Beach Federal against the Federal Home Loan Bank of San Francisco, Federal Home Loan Bank of Los Angeles and Federal Home Loan Bank of Portland, attempted to transfer beyond the reach of any process against Fahey and Ammann personally, more than $7,000,000.00 of the assets of said defendant

Long Beach Federal which they, Fahey and Ammann, seized here in California. Each of these Federal Home Loan Banks is within the reach of the process of this Federal District Court in California, but of course beyond the reach of the District of Columbia courts. Actually, Fahey and Ammann are conniving to prevent any Court anywhere from ever reviewing their acts. Why they, as government officials, should be unwilling to submit to a United States Court the questions of the propriety, validity and constitutionality of their acts is a question to be answered only by their conduct. Government officials proud and unashamed of their acts should have no hesitation to justify themselves before any Court when called into question by the 16,000 innocent shareholders whose property they have seized. Dilatory plans attempting to evade the hearing on the merits on fine distinction of venue and jurisdiction come with a very poor grace from Federal officials under these circumstances. If any court has jurisdiction except the court at Los Angeles, it could only be in the District of Columbia Federal Court. Are these 8000 borrowers to trek 3000 miles across the United States to pay off their loans and get a clear title to their homes? Are these 16,000 shareholders to present their pleas for justice 3000 miles from the location of the institution in which they deposit their money? Are these 24,000 home owners and savers helpless against appellants' tyranny so long as Fahey stayed 3000 miles from the scene of his invasion and confiscation? If defendants Fahey and Ammann are right, what is to become of the

nearly $1,000,000 physically in the registry of the Federal Courts of Los Angeles, California? If these courts are without jurisdiction to determine who is the owner of this money, Section 118, U. S. C. and Section 41, Subdivision 26c, U. S. C. must both be repealed by the decision of this Honorable Supreme Court. Why are defendants Fahey and Ammann so fearful to submit the justice in their cause to the decision of impartial federal judges at the scene of defendants Fahey and Ammann depredations? If there was any justification and truth in fact for these arbitrary confiscations certain federal officials should not hesitate to submit these matters to the Federal Courts. When the Congressional Investigating Committee, with unquestionable powers of subpoena, demanded of defendants Fahey and Ammann physically in their presence, the justification for these outrageous invasions, they told the Congressional committee the matters would be submitted to the Courts. But when the time comes to plead in court, no facts are given, the plea is made, "we are beyond the power of all courts."

Must every one of the 8000 home owners and the 16,000 whose savings are represented in the assets of this institution follow day by day the progress of the litigation 3000 miles away in the District of Columbia to determine who holds the title to their homes and savings? Must every citizen throughout the United States having any contact with the Federal Home Loan Bank of Los Angeles or the Long Beach Federal Savings and Loan Association also be in Washington, D. C. to protect his sav-

ings and homes? Must they set out in pursuit of their seized and merged assets to whatever final resting place is determined by the defendants Fahey and Ammann?

The stockholders of the Portland Bank are now stockholders of a bank in San Francisco, California. Is their only remedy to go to the District of Columbia Federal Courts? The merger and transportation of the assets of the seized Long Beach Federal Savings and Loan Association has been prevented by the restraining order of the District Courts at Los Angeles. If those courts are held without authority to have restrained the flight of the assets, where does such authority rest? Clearly if the Los Angeles Federal Court, wherein its boundaries is situated the $26,000,000 in question, has no power over this property, certainly none of the courts of any of the jurisdictions to which the property may be merged or transferred, would have any jurisdiction and the only recourse of these thousands of people is to hope to catch the defendants Fahey and Ammann, both at the same time, in the District of Columbia on one of their meetings between their swings around the country merging and liquidating institutions in California to Oregon and each of the other 48 states, and possibly within the territories of Hawaii and Alaska.

In fact if the merger power be upheld, and the lack of jurisdiction be determined, it would be impossible for those whose savings and homes, are being dealt with to be fleet enough in pursuit to ever catch up with the flight of the assets in the hands of appellants.

III-C.

Fahey Not an Indispensable Party.

Having demonstrated, we believe, beyond refutation, that the Court had jurisdiction over the $26,000,000 in real property and other assets physically within its boundaries, we come to appellants' contention that, because Fahey was not personally present committing his own depredations, but was acting through Ammann and other subordinates physically within the boundaries of the District Court and carrying out Fahey's orders against property, savings and homes, physically within the boundaries of the Court, that merely because of Fahey's absence, the District Court, where the property is and where the depredations are committed, is helpless to administer justice. The doctrine is not advanced upon the basis that Fahey is a government officer. The rule he seeks to apply would apply to any ordinary citizen. It has been rejected many times and whatever application it might have to the jurisdiction under Title 28, Section 118, U. S. C., it could have no application whatever to the interpleader jurisdiction. Title 28, Section 41, Subd. 26(c) U. S. C., says:

> "Notwithstanding any provision of Part I of this Title to the contrary, said Court shall have power to issue its process for all such claimants . . . which process . . . shall be addressed to and served by the U. S. Marshall for the respective Districts wherein said claimants reside or may be found."

See *Trieues v. Sunshine Mining Co.*, 308 U. S. 66 at page 70, which holds that such process runs throughout the United States. Realizing the jurisdiction is thus acquired over Fahey, at least to the extent of the $12,000,000 in notes and Deeds of Trust interpleaded in the bill

in the nature of interpleader and that Fahey is faced with the unpleasant choice of submitting to the jurisdiction of the Courts, in the district in which he committed his depredations or the equally unpleasant choice of defaulting and allowing judgment to go against him at least as to this $12,000,000. At pages 46 to 57 of Appellants' Brief, they undertake one of the most strained constructions they have yet presented: That is, that the conservator got neither title to, nor possession, of the property he seized and that neither he, nor Fahey, are making any claim to any of the $26,000,000. In these pages of their Brief, they claim that Fahey, so long as he stays out of California, can authorize Ammann to physically seize possession of the $26,000,000 in assets; to sell more than $7,000,000 of the association's bonds (this sale apparently has no effect on the title. We wonder if the purchasers of these bonds will concur that they acquired no title when they bought from Ammann) to sell or pledge $10,000,000 worth of the very Trust Deeds covered in the bill in the nature of interpleader; to pay out more than $10,000,000 of the association's assets to withdrawing shareholder depositors; to purchase hundreds of thousands of dollars worth of additional stock in the Federal Home Loan Bank of San Francisco; to withdraw over a million and a half dollars from the association's bank accounts. All of these actions, according to Fahey and Ammann, do not involve either title to or possession of any of the tens of millions of dollars of property thus sold and transferred. In his Brief, Appellant Fahey claims the right to merge the association at his Will and so long as he signs his order of merger, outside of California, and himself stays outside of California, he says, the District Court

is helpless to prevent his action. Overlooking entirely the fact that unless his merger order conveys the title to the merged $26,000,000 in assets, the recipient of the merger would receive nothing. He also claims that he makes his order in Washington, D. C. for his "administrative hearing" wherein he judges himself to justify his own acts that he can order such hearing held within the boundaries of the U. S. District Court and that such Court is also helpless to prevent this usurpation. Again ignoring Title 27, Section 41, Subd. 26(c), U. S. Code, which reads,

> "Notwithstanding any provision of part I of this Title to the contrary, said Court shall have power to issue . . . an order of injunction . . . . enjoining them from instituting or prosecuting any suit or proceeding in *any* state Court or in *any* U. S. Court, on account of such money or property or on such instrument or obligation until the further order of the Court which . . . . order of injunction . . . shall be addressed to and served by the U. S. Marshall for the respective Districts wherein said claimants reside or may be found." (Emphasis added.)

In the face of this language, Fahey yet claims to be beyond the power of the U. S. District Court, which has interpleaded $12,000,000 of notes and deeds of trust in this action, and that he can notwithstanding such interpleader ignore the injunction of the Court and merge the association and the $12,000,000 as he pleases, thereby defeating the power of the District Court to adjudicate concerning the interpleaded property. He also claims notwithstanding the Court's power to enjoin any suit or "proceeding in any State or U. S. Court", that he can conduct his own court, his self constituted administrative hearing, wherein he judges for himself and makes his own decisions in

favor of himself and ousting the U. S. District Court of its jurisdiction given by the Congress of the U. S. in the language of said Subd. 26(c) above quoted. One who seeks desperately to avoid submitting the justice of his case to impartial U. S. Courts must have very good reasons for so doing. Why is appellant Fahey so insistent that no one but himself can administer justice between himself and those whose homes and savings he has seized? Even regardless of the jurisdiction of Section 118 and of Section 41, Fahey is not an indispensable party.

The unconstitutional act, Section 5-D H. O. L. C. of 1933 provides no protection for Ammann's acts within the boundaries of the District Court and renders Fahey's presence unnecessary. See:

Colorado v. Toll (1925), 268 U. S. 220. 45 S. Ct. 505, 69 L. Ed. 927,

wherein the court said:

> "This is a bill brought in the District Court by the State of Colorado to enjoin the superintendent of the Rocky Mountain National Park from enforcing certain regulations for the government of the park, which are alleged to be beyond the authority it conferred by Acts of Congress, and to interfere with the sovereign rights of the state. These regulations forbid any person to reside permanently, engage in any business, or erect buildings in the park without permission in writing from the Director of the National Parks Service, provide for the removal of disorderly persons and forbid their return without permission from the Director, and impose a fine or imprisonment or both, for violating these regulations, the defendant, it seems, being the sole judge. The special subject of complaint is a further regulation, subject to similar penalties, that the park is open to automo-

biles operated for pleasure, but not to those carrying passengers, who are paying, either directly or indirectly, for the use of machines, (excepting however, automobiles used by transportation lines operating under government franchises).' It is alleged that the defendant and his superior officers assert full authority over all highways in the park, to the exclusion of the state, and refuses permission to anyone operating automobiles for hire except one corporation which has received a permit. . . . The bill was dismissed for want of equity by the District Court.

The object of the bill is to restrain an individual from doing acts that it is alleged that he has no authority to do, and that derogate from the quasi-sovereign authority of the state. There is no question that a bill in equity is a proper remedy, and that it may be pursued against the defendant without joining either his superior officers or the U. S. Missouri v. Holland, 252 U. S. 416, 431, 64 L. ed. 641, 646, 11 A. L. R. 984, 40 Sup. Ct. Rep. 382; Philadelphia Co. v. Stimson, 223 U. S. 605, 619, 620, 56, L. ed. 570, 575, 577, 32 Sup. Ct. Rep. 340. As the bill was dismissed upon the merits, it is not necessary to say more upon this preliminary question."

Also see:

Varnell et al., Florida Control Committee v. Hillsborough Packing Co. et al., 70 Fed. Rep. (2d) 434 (1934), Circuit Court of Appeals, Fifth Circuit,

wherein the court said:

"The interlocutory injunction was granted on the broad grounds, as stated by the district judge in an oral opinion which appears in the record, that the sections of the act involved and the means attempted for their enforcement by marketing agreement,

license, orders and penalties were unconstitutional and therefore void. On the question of jurisdiction, appellants argue that the Secretary of Agriculture is an indispensable party, that, because the prorate orders complained of have been revoked, the case is moot and that in any event appellees had no right to come into court seeking an injunction without first exhausting their administrative remedy by applying to the Secretary for relief against the orders of the control committee. We agree at once that the Secretary, not being before the court, could not be enjoined from enforcing his regulations. Gnerich v. Rutter, 265 U. S. 388, 44 S. Ct. 532, 68 L. ed. 1068; Webster v. Fall, 266 U. S. 507, 45 S. Ct. 148, 69 L. ed. 411. But, if those regulations are indeed invalid, the control committee can not shield themselves behind the Secretary, or compel compliance written in his name. Colorado v. Toll, 268 U. S. 228, 45 S. Ct. 505, 69 L. ed. 927. *It follows that the Secretary was not an indispensable party.*" (Emphasis added.)

Also see

Brooks v. Dewar, 313 U. S. 354, 359.

The attempt to merge, liquidate and seize the $43,000,000 Los Angeles Bank and the $26,000,000 Long Beach Association, both situated in Los Angeles County, California, and at the same time to claim immunity from the United States courts created by Congress to test under Section 380(a), U. S. C., the validity of such actions merely because Fahey remains in Washington and acts through subordinates, comes with very poor grace from government officials, appointed to protect the savings and homes of the people.

IV.

THE DECREE OF THE THREE-JUDGE COURT ON MOTIONS WAS PROPER.

In their opinion of September 5, 1946, the three-judge statutory court had decided that Section 5(d) of the Home Owners Loan Act was unconstitutional. From this decision many inevitable consequences flowed.

In

Norton v. Shelby County, 118 U. S. 425, 30 L. Ed. 178,

the court said:

> "An unconstitutional act is not a law. It confers no rights. It imposes no duties."

This decision was cited with approval in *Chicago S. L. R. Co. v. Hachet*, 228 U. S. 559 at 566 (1913), and in *Chicot Co. Drainage Dist. v. Baxter State Bank*, 308 U. S. 371 at 374 (1940), and many Circuit Court of Appeals decisions.

Governmental officials and their subordinates acting under unconstitutional law were merely trespassers and without any authority whatsoever. Section 5(d) being unconstitutional placed the defendants Fahey and Ammann in exactly this position. Their only possible excuse for being in possession and control of the assets and business of the Association was such authority, if any, as they had under Section 5(d) and the three-judge court had just determined that they had no such authority. The Motions, Affidavits and Exhibits, Pleadings and other papers filed by all parties, particularly those filed by and on behalf of the defendants Fahey and Ammann, had completely dis-

closed their entire claims and defenses. This is demonstrated by the Answers actually filed by defendant Ammann after the taking of the appeal. [R. 520-537.] However, regardless of whether or not Answers had ever been filed nothing that either Fahey or Ammann could say in their Answers would serve to make valid and constitutional Section 5(d) which the court had just determined was unconstitutional and void. Under Rule 54(b), Rules of Civil Procedure for Districts Courts of the United States, the court was not only authorized but required in the decree in which it held Section 5(d) unconstitutional to at that time determine all matters connected with or arising from this question of constitutionality. There are, of course, many long and complicated trials and issues as yet undisposed of including among them the Answers of defendant Long Beach Federal Savings and Loan Association to plaintiffs' Complaint and to the various Interpleader Cross-claims. The Cross-claim contained in said Answer of Long Beach Federal Savings and Loan Association against the defendants Fahey and Ammann. The Third Party Complaint of Long Beach Federal Savings and Loan Association against the Federal Home Loan Banks of Los Angeles, San Francisco and Portland, the accounting by defendant Ammann for the tens of millions of dollars of assets, securities and property of said Association which he had bought, sold, transferred and dealt with without authority or right in law so to do. The disposition of the subsequent interventions similar to the $800,000 intervention of Home Investment Company, the allowance upon account of attorneys' fees and expenses of the various parties (a partial disposition of which has just been made by the allowance of $50,000 on account of attorneys' fees

and $17,295.13 to counsel for plaintiffs' Shareholders' Committee), and numerous other facets of this complex litigation had to be developed. The decree was final as to all matters concerning the validity and constitutionality of Section 5(d) AND THESE MATTERS WERE PROPERLY DETERMINED FROM THE CONTEXT OF THE ACT ITSELF AND COULD NOT BE ALTERED IN ANY WAY BY ANY PLEADING OR ACTION OF ANY OF THE PARTIES.

In the administration of justice the courts have been striving throughout the various reforms in procedure to expedite and speed up the process of the administration of the law. The Rules for Civil Procedure for District Courts of the United States adopted by this Honorable Supreme Court in 1938 pursuant to the Act of Congress was one of the greatest remedial improvements in judicial history. It simplified and expedited the formerly previous methods of pleadings with their numerous handicaps and hindrances upon the action of judges seeking to cut through a maze of technicalities and administer speedy justice.

It undoubtedly would have greatly pleased defendants Fahey and Ammann for the three-judge statutory court to have allowed them to remain in possession during the years which would necessarily elapse before a final disposition of all of the intricate details necessarily attendant upon litigation of this magnitude. But why should trespassers under an unconstitutional law retain the fruits of such trespass for this lengthy period?

Assume for a moment that the adjudication of unconstitutionality is sustained by this Honorable Court (as we are convinced that it is correct and will be sustained), and the case then returned to the three-judge court for disposition of the undecided matters, what further pro-

ceedings will affect the validity of Section 5(d) under the United States Constitution?

Courts of equity have faced similar problems in other cases and have not found themselves without power to effect a complete remedy.

In the case of *Alleger Ky. Oil Co. v. Snyder et al.*, 106 Fed. 764, U. S. Circuit Court of Appeals, 6th Circuit, the action was decided and a final judgment entered by the trial court upon applications for temporary injunctions. An appeal was taken in the Circuit Court of Appeals, among other things, on the ground that the trial court erred in disposing of the cases on their merits without a trial. This contention was overruled and the trial court judgment affirmed, in the following language:

> "Where cross-suits between two lessees of the same property were heard together by a federal court upon motions for preliminary injunctions, submitted on bill, answer, and affidavits in each case, and the rights of the parties depended solely on the validity and construction of the first lease, the facts being substantially undisputed, the court had power to enter final decree on such hearing.
>
> "It is urged by counsel for appellant that the circuit court erred in disposing of the cases on their merits, and entering final decrees therein without taking proofs in due course under the equity rules. The cases came on for hearing on the application of the oil company for a temporary injunction, the granting or refusal of which necessarily involved the continuing of the injunction granted in the state court, as well as the cross application of the oil company for an injunction. The court considered these cases together. The cases stand upon bill, answer, and affidavits. In view of the construction given the

Snyder lease in the Circuit Court, affirmed in this court, the holders thereof were entitled to have their rights protected, and interference therewith by holders of the second lease enjoined. The first lease being held valid, the attempted second lease must necessarily fail. There was nothing in the bill of the Allegheny Oil Company in the one case, or its answer in the other, which required further testimony before construction and effect could be given to the first lease. As was said by Judge Thompson in the circuit court, the facts were substantially undisputed. The allegations made that Fowler understood the premises were to be promptly drilled for oil and gas could not affect the agreement as reduced to writing, in the absence of allegations of fraud or mistake. There was no attempt to reform the instrument. No amendment to the bill or answer was proposed, nor has there been any suggestion of further facts material to the controversy. In such cases the courts of the United States may proceed to administer final relief without putting the parties to the expense and delay of protracted litigation. Mast, Fees & Co. v. Stover Mfg. Co., 177 U. S. 485, 20 Sup. Ct. 708, 44 L. Ed. 856, citing, with approval, Cardt v. Brown, 113 Ill. 475; Green v. Mills, 16 C. C. A. 516, 69 Fed. 852, 25 U. S. App. 383; and the decision of this court in Mayor etc. of Knoxville v. Africa, 23 C. C. A. 252, 77 Fed. 501, 47 U. S. App. 74. Finding no error in the decree entered in the court below, the same will be affirmed."

THE UNITED STATES SUPREME COURT REFUSED TO GRANT CERTIORARI TO REVIEW THIS JUDGMENT, such refusal being contained in 45 L. Ed. 1930, 181 U. S. 618 (1901). Case No. 617.

As so aptly said:

> "Nor has there been any suggestion of further facts material to the controversy. In such cases the courts of the United States may proceed to administer final relief without putting the parties to the expense and delay of protracted litigation."

While appellant Fahey has vehemently insisted to the court that he wants to raise defenses in his answer, for reasons of his own, he has completely failed to specify the nature of any of such defenses.

The District Court for the Southern District of California has in the case of

Coca Cola Co. v. Los Angeles Brewing Co., 1 Fed. Rules Decs., p. 67,

wherein Judge McCormick, presented with a similar situation, granted a permanent injunction finally disposing of the entire case upon the application for a temporary injunction, used the following language:

> "(1) The court believes that these matters are admittedly in the sound discretion of the court, to be exercised judicially and not arbitrarily. There is, however, a fixed principle in patent law and I dare say it is applicable in trade-mark litigation as well. It has been applied in many cases by this court. It operates where there isn't anything to be gained by prolonging litigation except to afford one or the other of the litigants a respite and moratorium to suspend the enforcement of rights; but that is no safe criterion in determining the course that the court should follow on an application for a preliminary injunction. It usually applies in patent litigation where there has been a prior adjudication validating a patent and the only question at issue is one of infringement. There

the situation can be arrived at generally, except in so far as the question of infringement is concerned, just as securely and much more satisfactorily on the preliminary application as it can by a trial after a long hearing, expensive both as to time and as to money.

"(2) What is there here that can be modified or changed or that needs any further exploration? What factual situation is there that could be any more definitely presented to the court in January than today? I think there is nothing. There may be many more affidavits filed on each side of the question. There may be a great deal of oral testimony developed on both sides of the issue. There may be extensive arguments made as to the effect of those matters but, upon analysis, the same issue will be presented; if that is the case, it should be determined summarily.

. . . . . .

"(5) . . . It seems to me that in the interests of both sides of the case it should be decided now. . . . An injunction will issue accordingly restraining the use or sale or advertisement of a beverage of this type or any beverage for human consumption using the word 'coke.'"

As Judge McCormick so aptly said:

"What is there here that can be modified or changed or that needs any further exploration? What factual situation is there that could be any more definitely presented to the court in January than today? . . .

Upon analysis, the same issues will be presented. If that is the case it should be determined summarily."

In addition, the Federal Rules of Civil Procedure, Rule No. 54, reads in part as follows:

"(a) Definition: Form. 'Judgment' as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

"(b) Judgment at various stages. When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counter claims arising out of the transaction or occurrence which is the subject matter of the claim, may enter judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered."

This language is particularly significant:

"In case a separate judgment is so entered the court . . . may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered."

Judgment is defined as including "any order from which an appeal lies."

If the Act of Congress be held by this Honorable Supreme Court to be unconstitutional, an affirmance of the judgment of the court below is required "to secure the benefit thereof to the party in whose favor the judgment is entered." If, on the other hand, Section 5(d) be sustained, questions of the validity, constitutionality and application of the regulations, matters which directly require substantial factual inquiry, at once present themselves. Trial upon oral testimony by all parties would be required to determine these issues, but could lend nothing to the decision as to whether or not Section 5(d) is unconstitutional. This must be determined by the language of the Act itself. We believe for the reasons elsewhere more fully stated that Section 5(d) is so repugnant to the American standards of equality and justice and to the Constitution of the United States that it cannot be allowed to stand.

V.

NEITHER SHAREHOLDER MEMBERS PLAINTIFFS NOR THE ASSOCIATION ITSELF WERE ESTOPPED TO ASSERT THE UNCONSTITUTIONALITY OF THE ACT OF CONGRESS.

Appellants seek to prevent a hearing by this Honorable Supreme Court on the merits of the unconstitutionality of Section 5(d) by urging the plea, that the shareholders plaintiffs in this case whose savings are at issue are estopped or prevented from seeking the protection of the three judge statutory court and of this court accorded to the plaintiffs by the Constitution of the United States. Estoppel is an equitable doctrine used to prevent the imposition or taking advantage by guilty party, of an innocent party. Actually, if anyone is estopped, appellants Fahey and Ammann are the parties estopped. The very charter granted the Association contains the following language: "The Association shall have perpetual succession and power . . . to wind up and dissolve, merge, consolidate or re-organize in the manner provided by law, and rules and regulations made thereto." . . . "The Association shall have such powers as are conferred by law and shall exercise its powers in conformity with the HOLC Act of 1933 and all the laws of the United States as they now are or as they may hereafter be amended, *and with the rules and regulations made thereunder which are not in conflict with this charter.*" [R. 164.] In other words, by a contract between Fahey's predecessors the 5-man Board and the shareholders, Fahey could not amend his regulations in any way to conflict with the charter granted by the 5-man "Board." His amendment giving him the right to appoint a con-

servator which would, of course, cut off the "perpetual succession" is in conflict with the charter and not binding upon these shareholders. The real issue of the constitutionality of 5(d) was submitted to the court by the shareholders on the merits regardless of this estoppel of Fahey by his own charter, but characteristically appellants unwilling to submit their case on the merits and squarely meet the issue of the justification, if any which they had for their confiscation of the Association have attempted to obscure the issue by saying that the shareholders had consented in advance to the confiscation of their savings at the will of the appellants Fahey and Ammann.

Certainly if the power of merger is given to the Association under its charter [R. 164], it cannot be exercised by Fahey in conflict with that charter. If the contention of appellants is correct that by depositing their savings in a Federal Savings and Loan Association, every depositor is estopped from asserting his rights under the United States Constitution and the Association itself is also estopped to make any effort to protect its depositors, then by this doctrine alone Fahey will have established complete dictatorship. The Act unquestionably unconstitutional (because of its unwarranted and excessive delegation of power to enact the laws of the United States), automatically becomes completely constitutional the moment the home of the small home owner or the small savings of a family are entrusted to such an institution.

Under this theory every unconstitutional confiscation is completely legal provided only the usurper can inveigle

his victim into, in some way participating in the unconstitutional law. If the shareholders are estopped to contest the appointment of a conservator, they are also estopped to contest the complete appropriation of their savings and their homes to any purpose which may please appellant Fahey. The mere statement, of course, demonstrates the absurdity of the contention. No court of equity will ever tie its own hands to prevent oppression, whether by a government official under an unconstitutional law, or by any other wrongdoer. Estoppel is aptly stated to be a shield and not a sword, to prevent injustice and not to perpetrate it. For appellants who have seized and confiscated the savings and homes of 24,000 families to attempt to interpose equitable estoppel as a defense, is insufferable. Our Supreme Court in an early case stated:

> *South Ottawa v. Perkins*, U. S. Sup. Ct., 94 U. S. 260, 24 L. Ed. 154.
>
> " . . . We cannot assent to this view. There can be no estoppel in the way of ascertaining the existence of a law. That which purports to be a law of a state is a law or it is not a law, according as the truth of the fact may be, and not according to the shifting circumstances of parties. It would be an intolerable state of things if a document purporting to be an Act of the legislature would thus be a law in one case and for one party, and not a law in another case and for another party: a law today, and not a law tomorrow; a law in one place, and not a law in

another in the same State. And whether it be a law or not a law is a judicial question, to be settled and determined by the courts and judges. The doctrine of estoppel is totally inadmissible in the case."

Of what benefit has the statute been to the shareholders, if it only entices them into entrusting their savings and homes to an institution to be merged, liquidated, dissolved or reorganized at the whim of Fahey?

We are not estopped by what was in the Act, because nothing in the Act or the Regulations would have warned anyone as to what has actually happened to the Los Angeles Bank and the Long Beach Association. Had the Act read, "Every depositor's savings are subject to confiscation without hearnig, and without notice at the unrestrained will of a one man board," and had any one under such conditions entrusted his money to such an institution, he would have only himself to blame. But where the arbitrary, tyrannical confiscation does not appear until after the institutions are created and the deposits made; estoppel cannot prevent those thus imposed upon from asserting their constitutional rights.

Estoppel is an equitable doctrine, not a hard and fast rule of law. Estoppel is applied or refused by courts of equity as justice and conscience require in each particular case. Does this Honorable Supreme Court believe that equity and conscience require the sustaining of these two confiscatory seizures?

VI.

THE THIRD PARTY COMPLAINT AGAINST THE FEDERAL HOME LOAN BANKS OF SAN FRANCISCO, LOS ANGELES, AND PORTLAND WAS PROPER.

At pages 99 and 100 of Appellants' Brief, without citing any authority or decision whatsoever for their statements, they undertake to raise, for the first time in this Honorable Supreme Court, a point they have never presented to the court below, a point not involved in any way in the judgment appealed from, and a matter not yet passed upon by the District Court. There was no motion on the part of appellants, Fahey and Ammann, to dismiss the Third Party Complaint, nor was any attack whatsoever made upon it by them before the court below.

Defendant Ammann was transferring to and from the Federal Home Loan Bank of San Francisco or to and from the Federal Home Loan Banks of Los Angeles and Portland, or perhaps to the Los Angeles and Portland banks, depending on the validity of the seizure and merger of the Los Angeles bank, tens of millions of dollars of government bonds and notes and deeds of trust owned by the Long Beach Federal Savings and Loan Association, obtained by Ammann by his seizure of the assets of said Association. [R. 228.] The validity and effect of these transfers was subject to serious doubts on two grounds:

1. As to what authority, if any, Ammann had to transfer the assets of the Long Beach Federal Savings and Loan Association to anyone, and,

2. To which of the three Federal Home Loan Banks, San Francisco, Portland or Los Angeles were the transfers being made.

Defendant Ammann also transferred the $340,000 worth of stock owned by the Association in the Los Angeles bank to the San Francisco bank and purchased with Association funds, hundreds of thousands of dollars of additional stock in the San Francisco bank.

The Third Party Complaint alleges in substance that prior to the seizure, liquidation and merger of the Federal Home Loan Bank of Los Angeles by these same appellants, Fahey and Ammann, the association Third Party plaintiff was the owner of 3,714 shares of the capital stock of the Federal Home Loan Bank of Los Angeles [R. 225]; that the value of such stock, together with its share in the surplus of said bank was approximately $380,000; that at the time of said seizure of said Los Angeles bank, it held approximately five to six million dollars of bonds belonging to Long Beach Association [R. 228]. That said appellants Fahey and Ammann seized such bonds when they made their seizure of the Los Angeles bank and when they seized the Long Beach Association, they also seized all records of amounts, serial numbers and designations of said United States Bonds; that appellants Fahey and Ammann had transferred, assigned and sold millions of dollars of bonds, notes and deeds of trust belonging to the Long Beach Association to the purportedly created Federal Home Loan Bank of San Francisco also a third party defendant. [R. 228.] That all of said transactions, including the seizure of the Los Angeles bank, creation of the San Francisco bank and the liquidation and merger of the Los Angeles

bank into the Portland bank were unconstitutional and void as were the seizure of the Long Beach Association and the transfer and sale of its millions of dollars of assets to the purported San Francisco bank. That all of said transactions involve the same questions of law involved in the main action, which is the constitutionality and validity of Fahey's and Ammann's seizure of the Long Beach Association and Fahey's and Ammann's merger and liquidation of the Los Angeles bank. The Third Party Complaint asked adjudication as to which of the three banks, Los Angeles, Portland, or San Francisco, was liable to the association for the approximately $6,000,000 in bonds seized by appellants, Fahey and Ammann and merged by them when they liquidated and merged the Los Angeles and Portland banks, and attempted to create the San Francisco bank.

It also asks adjudication of which of the three banks the Association is now a stockholder and when this is determined, it seeks an accounting of such bank for Long Beach Federal assets transferred to such bank by Fahey and Ammann.

It was thus apparent that identical questions of law and fact are presented:

First: In plaintiff's complaint against Fahey and Ammann.

Second: In defendant and cross-claimant Long Beach Federal Savings and Loan Association's cross-claim against Fahey and Ammann, and,

Third: In the Association's Third Party Complaint against Federal Home Loan Banks of San Francisco, Portland, and Los Angeles, however, the relief asked differs.

A decision of the law as to constitutionality of Section 5(d) will apply equally to Ammann's and Fahey's transfers of the Long Beach Association's assets to the San Francisco bank as it applies to Fahey and Ammann themselves. The liquidation and dissolution of the Los Angeles bank, creation of the San Francisco bank and the seizure of the Long Beach Association were all acts performed by appellants Fahey and Ammann in dealing with Long Beach assets. They took them out of one pocket as conservator for Long Beach and put them into another pocket created by them as the Federal Home Loan Bank of San Francisco.

The seizure of Long Beach arose from its resistance to these same appellants Fahey and Ammann confiscating the Los Angeles bank of which Long Beach was a stockholder and in which Long Beach had millions of dollars of Government bonds on deposit.

Is this litigation to be decided at one time in one case by judges familiar with all the circumstances or is it to be split up into many separate litigations solely for the benefit of appellants Fahey and Ammann? Rule 14 of the Rules of Civil Procedure for District Courts of the United States clearly authorizes the procedure taken in this case. Appellants Fahey and Ammann had already transferred and were in the process of further transferring the specific assets to one of the three defendant Home Loan Banks which assets thus transferred were the subject of the main action involving appellants Fahey and

Ammann and the Long Beach Association. The lower courts have held in:

Kravens v. Great Atlantic and Pacific Tea Co., 28 Fed. Supp. 66 (U. S. Dist. Ct.),

> "It is immaterial that the liability of the third party defendant may be based on a different contract than the agreement existing between plaintiff and original defendant, if the liability arises out of substantially the same set of facts."

And in:

Falcone v. City of New York, 2 Fed. Rules, Dec. 87, U. S. Dist. Ct., East. Dist. N. Y. (1941),

> "The Federal Rule as to when defendant may bring in third party defendant vests no discretion in Court to deny defendants application to bring in third party when facts warrant it." (Fed. Rules C. P. 14, 28 U. S. C. A., following section 723.)

See also,

Grim v. Lumbermans Casualty Co., 28 Fed. Supp. 715 (1939), Dist of Col., U. S. Dist. Ct.,

> "Defendant may bring in third party defendant by third party complaint setting out claims which might have been asserted against said third party defendant, had he been joined originally as a defendant in the original action."

No doubt it is somewhat embarrassing to appellants Fahey and Ammann to have both their unconstitutional seizure, liquidation, and merger of the Los Angeles bank and their unconstitutional seizure of the Long Beach Association considered by the same court at the same

time because the facts and law are practically identical. Nevertheless such procedure is not only authorized by the Federal Rules, but has been long the practice of equity courts who once having taken jurisdiction of part of a controversy exercise their equitable powers to determine in one action all disputes of the parties involved in the matter.

It is respectfully submitted:

1. That this point cannot be raised for the first time upon appeal by appellants who chose not to present their objections to the court below, and

2. That regardless of when or where questioned, the bringing in of the Third Party defendants was not only proper but very necessary to the ultimate disposition of the flood of litigation caused by these two confiscations and seizures by appellants Fahey and Ammann.

Conclusion.

The decree of the Three Judge Statutory Court was not only legally correct, but far more important, was imperatively required to correct the manifest injustices committed and continued by appellants, Fahey and Ammann. Its affirmance by this Honorable Supreme Court will speedily terminate litigation which otherwise must be prolonged for years. Justice for the small home owner (the average loan is $1500) and for the small savings (the average savings account is $1425) will be thereby speedily administered. Even more important than the unconstitutionality of Section 5-D is the sustaining by this Honorable Supreme Court of the jurisdiction of the

Three Judge Statutory Court to protect such savings and homes from the encroachments of appellants who should be protecting and not seizing. A denial of such jurisdiction on the super-technical grounds advanced by appellants would harm not only the 24,000 home owners and savers but would nullify the procedural reforms embodied in the rules for Civil Procedure for District Courts of the United States, the interpleader acts, and other procedural advances in the administration of justice accomplished during the last half century. Speedy administration of justice has been the objective of all these reforms. Are we to go forward with such reforms, or back to the dark ages of the law, when justice was granted or denied, depending on the skill in technicalities of the counsel presenting the case?

Respectfully submitted,

CHARLES K. CHAPMAN,

Attorney for Appellee, Cross-Claimant and Third Party Plaintiff Long Beach Federal Savings and Loan Association.

APPENDIX "A."

Appellants in Appendix "C" of their brief quoted portions of the statutes of the states of New York, Massachusetts, California, Indiana, Ohio, New Jersey and Kentucky omitting from their quotation, other portions of the same statutes, providing immediate review by the Courts of the action authorized in the sections of the state laws quoted by appellants. We feel that the omitted sections which provide due process are all that prevent the sections quoted by appellants from being unconstitutional as is Section 5-D H. O. L. C. Act. We respectfully urge the reading of Appendix "A" of our brief concurrently with Appendix "C" of appellants' brief.

McKinney's Consolidated Laws of New York annotated, Book 4, Banking Law. Section 606 of Article 13.

WHEN SUPERINTENDENT MAY TAKE POSSESSION OF BANKING ORGANIZATION; WHEN POSSESSION MAY BE SURRENDERED.

3. When the superintendent shall have duly taken possession of the property and business of any such banking organization, he may hold such possession until its affairs are finally liquidated by him, unless he shall surrender possession as provided in subdivision two of this section or in section six hundred thirty of this article, or be enjoined from continuing possession as provided in section six hundred seven of this article, or unless such banking organization shall, with the written approval of the superintendent, voluntarily wind up its affairs as provided in section six hundred five of this chapter.

Section 607 of Article 13—Manner and Time Within Which Taking Possession May Be Tested.

At any time within ten days after the superintendent has taken possession of the property and business of any banking organization such banking organization may apply to the supreme court in the judicial district in which its principal office is located, for an order requiring the superintendent to show cause why he should not be enjoined from continuing such possession. The court may, upon good cause shown, direct the superintendent to refrain from further proceedings and to surrender such possession. Formerly §60; amended L. 1932, c. 399, §2; renumbered 607 and amended L. 1938, c. 684, §104, eff. June 30, 1938.

Annotated Laws of Massachusetts—Vol. 5, c. 167, §33.

Application to Court to Enjoin Proceedings of Commissioner.

Whenever any bank of whose property and business the commissioner has taken possession deems itself aggrieved thereby, it may, at any time within ten days after such taking possession, apply to the supreme judicial court for the county w[redacted] the principal office of the bank is located to enjoin further proceedings; and said court, after citing the commissioner to show cause why further proceedings should be not enjoined, and after hearing the allegations and proofs of the parties and determining the facts, may, upon the merits, dismiss such application or may enjoin the commissioner from further proceedings and direct him to surrender the said business and property to the bank.

Deering's General Laws of California; 1937; Vol. 1; Act 986; Sec. 13.12. Court application by association aggrieved.

Whenever any association of whose property, business and assets the commissioner has taken possession, as aforesaid, deems itself aggrieved thereby, it may at any time within thirty days after such taking possession apply to the superior court of the county in which the principal office of such association is located, to enjoin further proceedings; and said court after citing the commissioner to show cause why further proceedings should not be be enjoined, and hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss such application or enjoin the commissioner from further proceedings and direct him to surrender such business, property and assets to such association. APPEAL. An appeal from such judgment enjoining the commissioner from further proceedings and directing him to surrender such business, property and assets to such association shall not operate as a stay thereof, unless the trial court in its discretion shall so order and no bond need be given if such appeal be taken by the commissioner; but if such judgment dismisses such application an appeal therefrom shall not operate as a stay thereof but the court rendering such judgment may, in its discretion, enjoin the commissioner, pending the appeal, from further proceedings and direct him, pending the appeal, to surrender such business, property and assets to such association, provided a bond shall be given as required by section 943 of the Code of Civil Procedure.

Burns Indiana Statutes Annotated, 1933, Vol. 5. 18-301.

18-306. ACTION TO ENJOIN DEPARTMENT.

At any time within ten (10) days after the department shall have taken possession of the business and property of any financial institution, pursuant to the provisions of this act, unless such possession be taken under order and decree of court, pursuant to the provisions of section 42 (§18-302) of this act, such financial institution may, by petition, apply to the court wherein such liquidation proceedings are pending, for an order requiring the department to show cause why it should not be enjoined from continuing such possession, and, after notice to the department, and after hearing the evidence, the court may dismiss such petition or may order the department to refrain from further proceedings and surrender possession of such business and property.

Page's Ohio General Code Annotated, Vol. 1, Section 687.

Section 687-2 (Court may require superintendent to file bill of particulars, when; answer and cross petition; hearing; appeal from final order).

The domestic building and loan association named in the title of the proceedings provided for in section 687-1 of the General Code may within seven days after the filing of notice, pursuant to sub-paragraph 3 of said section, make application to such court for an order requiring the superintendent, within such time, not exceeding fifteen days, as may be fixed by the court, to file therein a bill of particulars specifying the ground or grounds named in section 687 of the General Code on which he has taken possession of its business and property and the operative facts found by him with respect thereto.

If the superintendent does not comply with such order within the time fixed therein such liquidation proceedings shall be dismissed. Within fifteen days after the filing of such bill of particulars, the association may file an answer and cross petition in such proceedings joining issue on the allegations set forth in the bill of particulars. If issue is so joined, the court, or a judgment thereof in vacation, shall set the proceedings down for immediate hearing upon such issue or issues. If the court finds that the bill of particulars is insufficient in law or that the superintendent of building and loan association has exceeded or abused his power and discretion, the court shall dismiss the liquidation proceedings and direct the superintendent to surrender its business and property to such building and loans (loan) association; and the decree and order of the court shall operate to revest the title of all such property in such building and loan association as of the time therein specified. An appeal may be taken from the final order of the court as in other chancery cases. An appeal by the superintendent of building and loan associations from a final order dismissing such proceedings shall operate as a supersedeas thereof. The perfecting of such an appeal by such superintendent shall be governed by section 12227 of the General Code.

New Jersey Statutes, Annotated, Title 17:

42-66. APPLICATION FOR INJUNCTION.

The commissioner may apply to the chancellor for an injunction restraining the association from transacting further business, or transferring or disposing of its property in any manner. The chancellor upon being satisfied of the sufficiency of the application, may order an in-

junction and appoint a receiver, with power to sue for, collect, receive and take into his possession all the real and personal property, rights and credits, moneys, books, paper, choses in action, bills and notes and property of every description of the association, and sell, convey and assign the same, and hold and dispose of the proceeds thereof under the direction of the court of chancery. The application may be, instead, for an injunction against excessive expenses of management, or for the removal of the attorney, conveyances or any officer, director, employee or agent of the association, or for such other relief or correction as the facts require. The chancellor, after hearing, may grant such orders and in his discretion, may modify or revoke the same, as the evidence, the situation of the parties and the interests involved require.

Kentucky Revised Statutes, 1946:

287.560. (165a-13; 165a-16.) DIVISION TO TAKE CHARGE OF INSOLVENT INSTITUTION; WARNING AGAINST UNSAFE POLICIES; APPOINTMENT OF RECEIVER.

(1) If it appears upon examination that any bank or trust company is insolvent or that its capital has become impaired, and has been permitted to remain impaired beyond the period allowed by law, the division of banking shall immediately take charge of the bank or trust company and all of its property and effects.

(2) If an examiner finds that any bank or trust company is pursuing a dangerous and unsafe policy, the examiner shall call the directors and officers of such institution together and advise them fully of the nature of such objectionable practices, and warn them against a repeti-

tion thereof, and shall make a full report to the division of banking of the practices warned against, and the advice given by him and thereupon the director of banking, shall, in person or by written notice to each director, require a cessation of such objectionable practices or policy. If his directions are not complied with, he may place an examiner in charge of such bank, or he may adopt such other policy as he deems best to bring the institution back to a safe condition.

(3) The officers, directors, or stockholders of any bank or trust company may execute to the director of banking a bond with security approved by him, to secure the creditors of such bank or trust company, and upon the execution of such bond the director of banking shall leave with or restore the custody and management of the bank or trust company to the officers and directors thereof. If the director of banking deems it necessary, he may cause a petition to be filed in the circuit court of the county where such bank or trust company is located, or apply to such court or to the judge thereof when the court is not in session, for the appointment of a receiver of such bank or trust company, and thereupon such court or the application for the appointment of a receiver, not later than twenty days from the date such motion is made. Notice of the hearing shall be served upon the bank or trust company. Upon such hearing the parties may be heard by affidavits or upon oral examination in court or before the judge and thereupon the judge shall hear and determine the question of the appointment of the receiver. If the court determines that such action or proposed action of the director of banking was justified, the court shall appoint a receiver, and shall fix the amount of the bond to be given by him.

In addition to the foregoing sections omitted by appellants in their Appendix "C" are the following extracts at random from a few other state statutory provisions also permitting immediate court hearing, which appellees contend is the essential element of due process.

Smith-Hurd Illinois Annotated Statutes—Chapter 32:243.

AUDITOR—DUTY—WHEN ASSETS ARE IMPAIRED—DISSOLUTION—RECEIVER.

When it shall appear to the Auditor of Public Accounts that the assets of any association doing business in this State are impaired to the extent that such assets do not exceed the dues paid on the shares with interest thereon at the rate of three per centum per annum for the average time invested or that it is conducting its business in a fraudulent, illegal or unsafe manner, he may direct the Attorney General to file a bill in the Circuit Court of the county in which said association is located in the name of the People of the State of Illinois against said association and its directors for the dissolution of said association and for an injunction and for the appointment of a receiver for the winding up of the affairs of said association and said court upon presentation of said bill and upon being made satisfied that the assets of said association have become impaired to such an extent that it can not be made good or that such association is being conducted in an illegal, fraudulent and unsafe manner, shall immediately appoint a competent and disinterested person as receiver of said association and shall determine and fix his bonds and prescribe his duties, and said cause shall proceed as other cases in equity.

And no bill shall be filed nor proceedings commenced in any court for the dissolution or for the winding up of the affairs or for the appointment of a receiver for such association on the grounds of insolvency or impairment of the assets of such association or on the grounds that such association is being conducted in an illegal, fraudulent or unsafe manner, except in the name and by the authority of the Auditor of Public Accounts represented by the Attorney General.

Such receiver shall file with the Auditor a copy of each report which he makes to the court appointing him in order that said Auditor may have at his command a complete record of all associations whose business has been so liquidated.

Wisconsin Statutes—1943:

215.33. POSSESSION BY BANKING COMMISSION. (1) CONDITIONS FOR TAKING POSSESSION.

The banking commission may forthwith take possession and control of the business and property of any association to which this chapter is applicable whenever it shall find that such association:

(a) Is conducting its business contrary to law, or

(b) Has violated its charter or any law, or

(c) Is conducting its business in an unauthorized or unsafe manner, or

(d) Is in an unsound or unsafe condition to transact its business, or

(e) Has an impairment of its capital, or

(f) Cannot with safety and expediency continue business, or

(g) Has suspended payment of its obligations, or

(h) Has neglected or refused to comply with the terms of a duly issued order of the commission, or

(i) Has refused to submit its books, papers, records or affairs for inspection to any examiner, or

(j) Has refused to be examined upon oath regarding its affairs.

(10) APPEAL. Whenever any such building and loan association whose property and business the banking commission has taken possession of, as aforesaid, deems itself aggrieved thereby, it may, at any time within ten days after such taking, apply to the circuit court of Dane county to enjoin further proceedings: and said court after citing the banking commission to show cause why further proceedings should not be enjoined and hearing all allegations and proofs of the parties and determining the facts, may, upon the merits dismiss such application or enjoin the banking commission from further proceedings, and direct it to surrender such business and property to such building and loan association.

Oregon Compiled Laws:

§41-901. POSSESSION AND OPERATION BY CORPORATION COMMISSIONER.

The directors of a savings and loan association may at any time call upon the corporation commissioner to take possession of and operate the properties and business of the association in the interests of its investors, creditors and shareholders and said corporation commissioner forthwith shall comply with such request by assigning the supervisor or bonded deputy from his department to such task.

Whenever the corporation commissioner shall take possession of any savings and loan association, whether by its request or in the exercise of his discretion and powers granted to him by the provisions of this act, he shall post in a conspicuous place in the principal office of such association a notice that he is so taking possession thereof and this shall operate as a bar to and as a dissolution of any attachment or other court proceeding then pending against said association.

If such possession of the property and business of an association has been taken by the corporation commissioner, without the request or written consent of its directors, said directors may, within ten (10) days after the posting of said notice, apply to the circuit court of the county in which the principal office of said association is located for an order requiring the corporation commissioner to appear and show cause why he should not be enjoined from continuing in such possession. Failure to file such application within ten (10) days shall be construed as a consent to such possession and be a bar to a later filing of such application. Said court may, after hearing and upon good cause shown, direct the corporation commissioner to refrain from continuing in such possession. Said corporation commissioner, however, shall in all such cases upon restoring possession to the directors of said association be allowed and paid from the funds of said association his reasonable expenses incurred during such possession including not to exceed $10 per business day, as compensation for the time the supervisor or bonded deputy has been in charge of said association. In the event no application is made to the court, as and within the time provided for herein to restrain said corporation commissioner, or if the court, after hearing had on such applica-

tion, shall deny the same, the corporation commissioner shall continue in possession and control of the properties and business of said association until said association, its properties and business, are sold, liquidated or restored to the directors by said corporation commissioner; and during such possession and control by the corporation commissioner no receiver for said association shall be appointed by any court, nor shall any instrument of assignment for the benefit of creditors of said association be filed in any court within this state, without notice to and consent of said corporation commissioner. (L. 1931, ch. 373, §52, p. 768; O. C. 1935 Supp., §25-393.)

Minnesota Statutes:

§49.04. Involuntary Liquidation of Financial Institutions.

Sub. 1. Commissioner taking possession; grounds for; rights of third parties.

When it shall appear to the commissioner that any financial institution has violated its charter, or any law of the state, or is conducting its business in an unsafe or unauthorized manner, or that its capital is impaired, or if it or any of its controlling officers shall refuse to submit its books, papers, and concerns to the inspection of the commissioner, or any assistant by him thereunto duly authorized, or if any of its officers shall refuse to be examined upon oath touching its concerns, or if it shall suspend payment of its obligations, or furnish reason for the commissioner concluding that it is in an unsound or unsafe condition to transact the business for which it was organized, or that it is unsafe and inexpedient for it to continue business, or if it shall neglect or refuse to observe a proper order of the commissioner, he may forth-

with take possession of its property and business and retain this possession until it shall resume business or its affairs be finally liquidated, as herein provided. On taking possession of the property and business of any such financial institution, the commissioner shall forthwith give notice of that fact to any and all financial institutions or other corporations, associations, partnerships, and individuals holding, or in possession of, and of its assets. No financial institution or other corporation, association, partnership, or individual knowing of such taking possession by the commissioner, or notified, as aforesaid, shall have a lien or charge for any payment, advance, or clearance thereafter made, or liability thereafter incurred against any of the assets of the financial institution of whose property and business the commissioner shall have taken possession, as aforesaid. The financial institution may, with the consent of the commissioner, resume business upon such conditions as may be approved by him. Upon taking possession of the property and business of the financial institution, the commissioner is authorized to collect moneys due to it and to do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof, if in his opinion it cannot safely resume business, as hereinafter provided.

Sub. 2. Application to enjoin liquidation. Whenever any such financial institution of whose property and business the commissioner has taken possession as aforesaid deems itself aggrieved thereby it may at any time within ten days after such taking possession apply to the district court to enjoin further proceedings, and said court, after citing the commissioner to show cause why further proceedings should not be enjoined, and hearing the allega-

tions and proofs of the parties in determining the facts, may upon the merits dismiss such application or enjoin the commissioner from further proceedings and direct him to surrender such business and property to such financial institutions.

New Mexico Statutes:

§50-1416. INSOLVENCY—REPORT TO GOVERNOR—RECEIVER—DEPUTY EXAMINER—BOND AND COMPENSATION.

If at any time it shall appear to the bank examiner that any bank (building and loan association) is insolvent, it shall be his duty to report the fact to the governor, and if it appears to the governor that such proceeding is necessary, he shall at once direct the bank examiner to immediately take charge of such bank (building and loan association) and all of the property and effects thereof.

Upon taking charge of any bank (building and loan association), the bank examiner shall as soon as possible, ascertain by a thorough examination of its affairs, its actual condition, and make a full and complete return thereof to the governor, and if the governor shall become satisfied that such bank can not resume business or liquidate its indebtedness to the satisfaction of all of its creditors, the attorney-general shall, upon advice from the governor, institute proper proceedings in the proper courts for the purpose of having a receiver appointed to take charge of such bank and to wind up the affairs and business thereof for the benefit of its depositors, creditors and stockholders. The bank examiner may appoint, with the consent of the governor, a special deputy bank examiner to take charge of the affairs of an insolvent bank

(building and loan association) temporarily and until a receiver is appointed. Such special deputy bank examiner shall qualify by subscribing and filing with the bank examiner an oath, in form and substance the same as that required of said bank examiner, and giving a bond in such form and amount as may be required of him, and for his services he shall receive such compensation as may be fixed by the bank examiner, subject to approval by the court; said compensation to be allowed by the court as costs in the case of the appointment of a receiver: Provided, that in no case shall any bank continue in charge of such special deputy bank examiner for a longer period than ninety (90) days. (Laws 1909, ch. 96, §4; Code 1915, §462; C. S. 1929, §13-1003.)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 687

JOHN H. FAHEY AND A. V. AMMANN, INDIVIDUALLY AND RESPECTIVELY AS FEDERAL HOME LOAN BANK COMMISSIONER AND CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,

Appellants.

vs.

PAUL MALONEY, C. H. NEWHOUSE, WINNIE BUCKLIN, *et al.*

Upon Appeal from the District Court of the United States for the Southern District of California.

BRIEF OF APPELLEE, TITLE SERVICE COMPANY.

HARRY C. WALLACE

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Appellants.

vs.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, *et al.*

BRIEF OI APPELLEE, TITLE SERVICE COMPANY.

Comes now Title Service Company, one of the appellees in the above entitled and numbered proceeding and herewith presents its brief in the pending appeal.

Introduction.

By reason of the fact that this appellee is not affected by all of the Assignments of Error no attempt will be made herein to thoroughly meet all of the appellants' points raised on this appeal. Before entering into a detailed analysis of the facts and the law as the same per-

tains to this appellee, it is believed that a brief résumé of the factual background giving rise to the litigation will be of assistance to the Court. Thereafter, a detailed presentation of the appellees' points will be presented and supported.

Factual Background.

The per-emptory seizure by the appellants, Fahey and Ammann, of the assets of the financially healthy Long Beach Federal Savings and Loan Association on May 20, 1946, found this appellee, Title Service Company, holding the titles in trust for approximately 8000 privately owned homes, subject to over $12,000,000.00 indebtedness, and immediately entangled and clouded their titles in such a way as to require the protection by the trustee under the terms of its trust.

Title Service Company is a corporation duly organized and existing under and by virtue of the laws of the State of California. It conducts a business consisting of the handling of escrows for the sale and exchange of real property, the sale of personal property and of going businesses; acts as trustee under deeds of trust; and offers various other services in connection with property transactions. Its principle place of business is in Los Angeles County, California, and it maintains two offices therein, one located in the City of Long Beach, and the other in Bellflower, California.

Title Service Company is the trustee named in substantially all of the deeds of trust wherein the appellee, Long Beach Federal Savings and Loan Association, hereinafter referred to as the "Association" was the beneficiary prior to May 20, 1946. These trust deeds approximated 8000

in number and all covered real property located in southern California, most of which is located in or near the City of Long Beach in Los Angeles County. [R. 31.] The aggregate unpaid balance of the promissory notes secured by said deeds of trust is approximately twelve million dollars ($12,000,000.00). The great bulk of said trust deeds cover residence property used as homes for their owners although a few were on income producing properties. A sizable number of the loans secured by said trust deeds were on property upon which homes were in the process of construction and many of them are for ex-service personnel.

In California, virtually all security transactions in real property involve the use of trust deeds, mortgages being virtually unknown. Under the California practice the borrower executes a promissory note in favor of the lender and concurrently executes a deed of trust whereby he conveys the legal title to the real property securing the loan to a trustee, under a trust whereby the trustee holds the legal title, the borrower is the trustor and the lender is the beneficiary, said trust providing for the reconveyance of the title to the borrower upon his paying his note, or in case of default by the borrower and after notice from the beneficiary to the trustee of such default, a sale by the trustee, followed by the payment of the proceeds from said sale to the beneficiary to the extent necessary to satisfy the balance due upon the note. The deed of trust also casts certain responsibilities upon the trustee including the right and duty to defend the title to the real property. [R. 402.]

On May 20, 1946, the appellee, Title Service Company was the trustee under approximately eight thousand

(8000) deeds of trust valued at twelve million dollars ($12,000,000.00), wherein the Association was the beneficiary. On that date the appellant A. V. Ammann claiming to act under an order promulgated by the Federal Home Loan Bank Administration, seized the possession and control of the assets of the entirely solvent $26,000,000.00 Association as a purported conservator. Said seizure was accomplished with no notice of any kind being given to said Association or to Title Service Company, with no opportunity being afforded to either party to be heard by an impartial tribunal or in any other forum impartial or otherwise. [R. 5, 33, 35.]

Very shortly after said seizure to wit: on the 31st day of May, 1946, the appellant delivered to Title Service Company [R. 35] 174 promissory notes and 174 deeds of trust in all of which Home Investment Company of Long Beach, a Corporation, was the maker and trustor and Title Service Company the trustee and said Association was named as beneficiary, accompanied by requests for reconveyance of the title to the real property described in said deeds of trust. Said requests were executed by the appellant, A. V. Ammann, as the purported conservator for said Association. The face value of the promissory notes approximated $800,000.00.

Title Service Company had not at that time and to this date has not been, furnished any documentary evidence of the purported appointment of appellant Ammann as a conservator. That shortly thereafter, to wit: on the 4th day of June, 1946, Title Service Company was served by the United States Marshal for the Southern District of California, with an alias summons and a copy of the complaint of the plaintiffs and appellees, Paul Mallonee, *et al.*,

being served as John Doe 1. [Original Tr. p. 64 designated but omitted in printing.]

Said seizure by the appellants Fahey and Ammann followed very closely the same pattern as did the seizure by the same parties of the Federal Home Loan Bank of Los Angeles on March 29, 1946. That seizure was made entirely without notice, without any complaint having been made or any opportunity provided to comply with the demands of the appellants and without any prior demands having in fact been made. Not only was the Los Angeles Bank seized, but its assets were transferred to the Federal Home Loan Bank of Portland and said latter bank was, and all on the same day, March 29, 1946, likewise transferred to the Federal Home Loan Bank of San Francisco, which bank had not theretofore existed but which was created on the same date. All of this was accomplished in the United States. The basis for the transfers and mergers were Federal Home Loan Bank Administration Orders No. 5082 and 5083. [R. 349-350.] To add the final coupe de grace the Los Angeles Bank was by Federal Home Loan Bank Administration Order No. 5084, dissolved in its entirety. [R. 352.] With such known background it was highly necessary that Title Service Company take some affirmative step to protect itself and the trustors whose trustee it was.

That by virtue of the requests for reconveyance delivered to this appellee by the appellant A. V. Ammann and the service upon it of the alias summons and complaint Title Service Company found itself faced with conflicting claims and as a result found itself unable to comply with such requests for reconveyance without jeopardizing itself and probably making itself liable to the plaintiffs

and appellees if it did so comply. Therefore, in order to protect itself it had no other alternative than to avail itself of the protection afforded by the interpleader act, Title 28 U. S. C. Section 41 (26). At about the same time Title Service Company was notified by the appellee Association that said Association did not recognize the authority of said conservator and that if Title Service Company complied with any requests for reconveyances executed by said A. V. Ammann, that Title Service Company would be held liable in damages for any loss ensuing thereby.

By reason of conflicting claims, hereinabove set forth, in availing itself of the protection afforded by the interpleader statute, Title Service Company physically deposited the 174 promissory notes and deeds of trust hereinabove described, together with the requests for reconveyances thereof executed by appellant A. V. Ammann, in the Registry of the United States District Court for the Southern District of California, Central Division, in interpleader; and by Bill in the Nature of Interpleader brought before the court the question of the right to direct the reconveyance as to all of the some eight thousand (8000) parcels of real property in which it was the named trustee. These issues were raised in the cross-claim in interpleader and in the nature of interpleader filed by Title Service Company on the 4th day of June, 1946. [R. 30, *et seq.*]

That shortly after the seizure of the Association, the defendant and appellant, John H. Fahey, issued the order of the Federal Home Loan Bank Administration No. 5309, calling an administrative hearing to commence on July 3, 1946, for the purpose of allowing any party interested to appear and show cause why a conservator should

not have been appointed for said Association. That under the provisions of said order [R. 94] said hearing would have been held before a hearing officer who would be without authority to do other than take testimony, transcribe the same, and present the same to his superiors of the Federal Home Loan Bank Administration for their opinion as to the validity or regularity and fairness of their own actions. No notice of said hearing was given to this appellee, Title Service Company, other than the notice given by the publication thereof in the Federal Register in Washington, D.C., 3000 miles away. The holding of such an administrative hearing would, in the opinion of this appellee, have constituted an usurpation of the functions of the federal court and particularly the usurpation of the jurisdiction of the federal court wherein the instant litigation, was then pending. Since the filing of its cross-claim in interpleader and in the nature of interpleader submitted the same question to the federal district court, it was the opinion of the Title Service Company that such hearing could have no result other than to further complicate the titles to the eight thousand (8000) parcels of real property which it held in trust. By reason of the fact that in the deeds of trust, wherein legal title was conveyed to the appellee, there was also imposed the right and duty upon this appellee, as trustee, to protect the titles to such real property [R. 402, Par. 3]. Title Service Company felt it incumbent upon it to take the necessary steps to have such administrative hearing restrained. Therefore, on June 28th, 1946, Title Service Company filed in the trial court its motion for temporary restraining order to enjoin the holding of an administrative hearing, together with the necessary supporting documents. [R. 129, *et seq.*]

That the Federal District Court had the undoubted right to stay the holding of such administrative hearing, by appropriate injunctive proceedings, is shown from a reading of the provisions of the Interpleader Act, 28 U. S. C. 41 (26), subdivision (c), wherein it is provided that the court shall have power to enjoin the instituting or prosecuting of any suit on account of the property which is the subject matter of the interpleader or bill in the nature of interpleader. The Act provides for such injunction to operate whether the action be brought or is pending in any court of any State or the United States. Therefore, this appellee had the undoubted right to seek a restraining order to prevent the hearing of the matter before one of the claimants who was presuming to act in a quasi-judicial capacity to review his own act.

That by reason of the fact that injunctive relief was sought in the original complaint, which challenged the validity of Section 5(d) of the Home Owners' Loan Act of 1933, Title 12, U. S. C., Section 1464: c. 64, section 5, 48 Stat. 132, as amended, and by reason of the further fact that the motion to restrain the holding of the administrative hearing, hereinabove referred to, and similar motions made by the plaintiffs and appellees, Mallonee *et al.*, a statutory court, composed of three judges was requested to be convened pursuant to the provisions of Title 28, U. S. C., Section 380(a), Section 57, of the Judicial Code. Several orders designating three judges to hear the matter were issued, the last one of which was filed July 12, 1946. [R. 305.] Said court was ordered

to, and did, convene in Los Angeles, California, on July 15, 1946.

During the interim period before July 12, 1946, Home Investment Company of Long Beach, a corporation, the trustor under the 174 promissory notes and deeds of trust, interplead by this appellee, commenced a proceeding in intervention by which it sought to and was successful in being allowed to deposit the balance due on the promissory notes in the Registry of the Court and obtained reconveyances of title to its real property described in said deeds of trust. After due notice and hearing, the complaint in intervention of Home Investment Company of Long Beach, was filed on July 1, 1946 [R. 247]; thereafter and on July 12, 1946, the intervenor obtained an order directing the execution and filing in the trial court of requests for reconveyances by the directors of the Association, and the execution and filing therein of the necessary reconveyances by the appellee Title Service Company and allowing the deposit by said intervenor of the sum of $774,927.90, principal, plus interest, bonus, and trustees fees in the Registry of said court. The order was lodged with the clerk of the trial court on July 12, 1946, and thereafter filed on July 20, 1946. [R. 319, *et seq.*] In said order said money was ordered deposited in the registry of the court and "the rights hereto and existing of each and every party to this action, except as to the Intervenor Home Investment Company of Long Beach, a corporation, its successors and assigns, be, and the same are hereby reserved and pre-

served without prejudice and shall be enforced against the said sum of deposited money to all intents and purposes as though said reconveyances had not been executed and delivered pursuant to this 'order.'" [R. 321-322.] Thereafter, said money was actually deposited and now is in the custody of the Registry of the trial court, in interpleader.

That statutory court was convened on July 15, 1946, composed of the Honorable William E. Orr, Circuit Judge, and the Honorable Dave W. Ling and the Honorable Peirson M. Hall, District Judges. The matters on the calendar for hearing by the statutory court as reflected by the clerk's minutes were the following:

> "(1) Motion of plaintiffs for a preliminary injunction to restrain defendants from merging or consolidating the Long Beach Federal Savings and Loan Association or its assets with other institutions, and to take testimony, oral evidence at the hearing thereof, pursuant to notice thereof, filed June 14, 1946;
>
> (2) Motion of A. V. Ammann, both individually and as Conservator for the Long Beach Federal Savings and Loan Association to dismiss, pursuant to notice thereof, filed June 14, 1946;
>
> (3) Motion of plaintiffs for preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Administration, *et al.*, pursuant to notice thereof, filed June 20, 1946;
>
> (4) Motion of interpleader, Ttile Service Company, for a preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, *et al.*, pursuant to notice thereof, filed June 28, 1946;

(5) Motions of the plaintiffs to continue in force the temporary restraining orders to restrain the merging of the same Long Beach Federal Savings and Loan Association with any other institutions; and to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, until the final adjudication and determination on the motions for a preliminary injunction, pursuant to notice thereof, filed July 5, 1946;

(6) Motion of defendant John H. Fahey, individually, and as Chairman of the Federal Home Loan Bank Board, to dismiss or in lieu thereof, to quash service of summons, pursuant to notice thereof, filed, July 5, 1946;

(7) Motion of defendant A. V. Ammann, individually, and as a conservator for the Long Beach Federal Savings and Loan Association to dismiss answer and cross-claim in interpleader of Title Service Company, and Robert H. Wallis, pursuant to notice thereof, filed July 5, 1946." [R. 306-307.]

This hearing was continued to July 16, 1946, upon the same matters. [R. 317-318.] All of the motions were presented to the court and argued as reflected by the minutes. Thereafter, the matter was submitted upon the filing by all parties of a recompilation of applicable points and authorities within five days.

The statutory court rendered its decision and opinion which was filed on September 5, 1946 [R. 374-378], in which opinion this court held unanimously that section 5(d) of the Home Owners' Loan Act of 1933, Title 12, U. S. C., Section 1464(d), was unconstitutional, and void as attempting to delegate legislative power to the

Federal Home Loan Bank Administration and directed that judgment be rendered in accordance with that opinion. Appropriate findings of fact, conclusions of law, and decree were prepared and entered on September 30, 1946, wherein all of the motions which had been before the court on the hearings of July 15, 1946, and July 16, 1946, were disposed of and wherein it was ordered and directed that the possession of the Association be restored to its directors and officers, and wherein it was further determined that the title to the property which was the subject matter of the interpleader and bill in the nature of interpleader, filed by this appellee, Title Service Company, was in said Assocaition, and that the appellants, Fahey and Ammann, had no interest therein. [R. 489-499.] After the rendition of the opinion, and on September 14, 1946 [R. 390], a motion was filed by the plaintiffs and the defendant Association, concurred in by this appellee [R. 393] for temporary restraining order seeking to prevent the appellants from interfering with the operation of the Association. The basis for said motion was the maladministration of the affairs of the Association by the appellant Ammann to the irreparable damage of the members of the Association. [R. 391.] and that the granting of such restraining order would stop the depletion of assets by withdrawals which had then resulted in a material loss of assets of approximately $10,000,000.00. [R. 392.] Said motion was supported by the affidavit of the appellee, Mallonee, and numerous other persons, with exhibits attached. [R.

394-424.] That motion was denied. [Tr. 652, designated but omitted in printing.] Subsequent to the filing of the opinion by the trial court and prior to the entry of judgment, and on September 25, 1946, a request for stay of execution was filed by the appellant Ammann. [R. 465-466.] This request for stay of execution was denied by the Trial Court, unanimously, concurrently with the entry of judgment on September 30, 1946. [R. 465.] Immediately upon the entry of the judgment the officers and directors of the said Association were placed in partial possession of its assets and property by the U. S. Marshal for the Southern District of California, pursuant to a writ of assistance and possession issued by the trial court. [R. 502-506.]

Following the restitution of the possession of the property and assets of the Association to its officers and directors a motion was presented to Mr. Justice Rutledge, of this court, for a stay of execution. This motion was heard on October 1, 1946, and an order was made by Mr. Justice Rutledge staying the execution of the judgment of the trial court. Appellant Ammann has been, and now is, continuing to act as such conservator.

Almost immediately thereafter, an appeal was taken by the appellants to this court and a citation on appeal was issued by the Honorable Peirson M. Hall, one of the trial judges, on October 3, 1946. [R. 2-5 of original record. Omitted in printing.]

I.

Absolute Jurisdiction of Trial Court.

One of the assignments of error is that the trial court did not have jurisdiction of the action. This was raised by motions to quash returns of service of summons made by the appellant Fahey and motions to dismiss made by the appellant Ammann. Primarily, the action is one entirely *in rem*. The principle action was commenced pursuant to the provisions of Section 118, Title 28, U. S. C., Section 57 Judicial Code, and was brought for the purpose of removing the encumbrance, lien or cloud upon property within the district of the United States District Court, Southern District of California, Central Division, to wit: the claim of the appellants of the right to the possession and control of the assets of the Association. Although that section is too lengthy to herein set out in full, it definitely provides for an action such as this which is strictly *in rem*. After providing for the manner of acquiring jurisdiction of non-resident defendants by appropriate order and service the section provides as follows:

> "In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within such further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within said district; but such

adjudication shall, as regards said absent defendant or defendants without appearance, *affect only the property which shall have been the subject of the suit* and under the jurisdiction of the court therein within such district; . . ." (Emphasis added.)

Two cases most nearly in point are:

Spellman v. Sullivan, et al., 43 F. (2d) 762, affirmed in 61 F. (2d) 787.

This action was a creditor's bill by which the plaintiff, a resident of Missouri, sought to reach the surplus of a trust fund in New York, of which the defendant, a resident of New Jersey, was the beneficiary. The action was brought in New York. The point was raised on a motion to dismiss made by the defendant upon a claim that the action should have been brought in the jurisdiction of which he was a resident. The trial court held, and the Circuit Court of Appeals affirmed, that the action was one sounding *in rem*, the *res* being the assets in New York. No judgment *in personam* was asked and, as stated in the opinion, in case of default by the defendant the only judgment that could be given would affect the *res*, and that to deny such jurisdiction would deprive the plaintiff of his remedy.

The second case is that of:

Bede Steam Shipping Co. v. New York Trust Co., et al., 54 F. (2d) 658, also on a motion to dismiss. The action was brought by a non-resident (British) company to enforce a lien on earnest money on deposit in New

York placed by a defendant resident of New Jersey, to secure the performance of a ship charter party. Following a dispute an award was made, in Admiralty, in favor of plaintiff and this action was brought to enforce that award. It was claimed by the defendant in support of his motion that the complaint not only sought to enforce the lien on the property in New York, but also prayed for a deficiency judgment against the defendant personally. In answer to this contention the court stated, page 661:

> "The defendant served outside the jurisdiction is protected in this regard by the provision of Section 118 that, if he does not appear in answer to the order served on him, the court in issuing the order for substituted service shall be limited in its decree, so far as he is concerned, to the lien sought to be foreclosed on the property within the district of suit and shall not have power to enter any decree *in personam* against him."

Other cases in point on the same question are:

Manning v. Berdan, 132 Fed. 382 (suit to enjoin collection of a note on which an equitable lien was asserted);

Kelleam v. Maryland Casualty Co., 112 F. (2d) 940 (suit to impress a trust on real and personal property);

Fischer v. American Life Ins. Co., 314 U. S. 549 (suit between receivers in different states, concerning title to and right to administer assets in possession of Iowa receiver);

All Continent Corp. v. Steelman, 86 F. (2d) 913, reversed in 301 U. S. 278 (suit to remove encumbrance and cloud on title to securities);

Clarke v. Boysen, 39 F. (2d) 800, certiorari denied 282 U. S. 869 (suit for removal of cloud from title);

Port Angeles Western Rwy. Co. v. Clallam County, 20 F. (2d) 202 (suit to remove tax lien);

Lockhard v. Mercer F. & M. Co., 53 F. Supp. 301 (suit to remove cloud on title to corporate stock and ownership thereof);

Stricker L. & F. Co. v. Hogue, 7 F. Supp. 1002;

Dick v. Foracker, 155 U. S. 404 (suit to remove cloud on title by tax sale).

In the instant case all of the necessary elements to jurisdiction are present. These elements are: (a) diversity of citizenship, (b) claim to or cloud on title to property, and (c) the requisite order for appearance served upon the non-resident defendant-appellant Fahey. That the appellant Fahey is a non-resident of California is evidenced by an affidavit filed on his behalf and made by Ray E. Dougherty in support of said appellant's motion to dismiss or in lieu to quash the return of service of summons, wherein it is stated the appellant Fahey is a resident and inhabitant of Swampscott in the State of Massachusetts. [R. 261] and that of the appellant. Ammamus is Silver Spring, Maryland, evidenced by the affidavit of Robert H. Wallis. [R. 304.] The same is further evidenced the amendment to the complaint filed by the plaintiffs and appellees, Mallonee *et al.*, on July 15, 1946, without objection, and which amendment has not been denied. [R. 312-315.] It is believed that the assets

of the solvent Association amounting to some $26,000,000.00, with a surplus of some $1,300,000.00, constitute "property" and that the handling and dealing therewith by the appellant Ammann undoubtedly constitutes a "cloud" on such title. [R. 5, 121, 285.]

It was claimed in the trial court by the appellant Ammann, in his motion to dismiss, that the action was governed by the provisions of Title 28, U. S. C. Section 112, and that the action should have been brought in the District of Columbia. That statute, however, refers only to actions brought by or on behalf of the United States, or any officer of the United States. The statute makes no reference whatsoever to suits brought against such officers. Therefore, the only implication that can be raised therefrom is that officers are subject to suit in any district in which the court otherwise has jurisdiction. A portion of sub-section (d) of that statute, as currently effective provides, in part as follows:

> ". . . but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the district of the residence of either the plaintiff or the defendant . . ."

Said Section 112 also contains several exceptions, one of which is Section 118, the section under which the principle action in this case was brought.

II.

Fahey Not Indispensable Party.

The action at bar is one *in rem*—not *in personam*. No personal judgment is asked against the appellant Fahey, and under the provisions of the United States Code, Section 118, under which the original proceeding here was brought, no personal judgment could have been had against that appellant even if the action were one *in personam* unless he had seen fit to appear and submit himself to the jurisdiction of the court below. The only judgment which could have been rendered adverse to the appellant Fahey, if he did not appear, was the one which was rendered, *i. e.*, affecting the right to the possession and control of the assets and property of the Association.

That said appellant is not an indispensable party is demonstrated by numerous cases wherein the action of a subordinate of a governmental superior was enjoined from carrying out some administrative act on the grounds that the act sought to be enjoined was being done pursuant to an Act of Congress which was challenged as being unconstitutional. Some of these cases are:

Colorado v. Toll, 268 U. S. 228.

In this case the State of Colorado had sought to enjoin the local superintendent of a national park from carrying out park regulations in conflict with traffic regulations of the State of Colorado wherein the national park was located. The District Court dismissed the bill in a holding that the superior, the Secretary of Interior, was an indispensable party and had not been joined. In passing

upon the matter this Court stated through the late Mr. Justice Holmes:

> "The object of the bill is to restrain an individual from doing acts that it is alleged that he has no authority to do and that derogate from the quasi-sovereign authority of the State. There is no question that a bill in equity is a proper remedy and that it may be pursued against the defendant without either joining his superior officers or the United States. Missouri v. Holland, 252 U. S. 416, 431; Philadelphia Co. v. Stimson, 223 U. S. 605, 619, 620. As the bill was dismissed upon the merits it is not necessary to say more upon this preliminary question."

Also to be noted is:

> *Jarvis (Postmaster) v. Shachelton Inhaler Co.*, 132 F. (2d) 116,

wherein the court affirmed the judgment of the trial court in enjoining the interference with the defendant's business. In this case it was stated:

> "A stronger case for injunctive relief can hardly be stated. The Postmaster General did not seek to intervene. If he had done so, he would have been bound upon the question of the validity of the fraud order upon the record as made, just as we have indicated the appellee was bound by it . . ."
>
> "Courts of equity have always struggled against technical rules, which impede rather than contribute to substantial justice."

Certainly if a cabinet member is not a necessary party, or an indispensable party to a proceeding which is attacking one of his orders, the appellant Fahey is not such

an indispensable party to the determination of the constitutionality of an act under which he has presumed to act. Whether he be before the Court or not does not affect, one whit, the constitutionality of the Act or the jurisdiction of the Court to pass upon its constitutionality.

Other cases in the same vein are:

American School of Magnetic Healing v. McAnnulty, 187 U. S. 94;

Homer Glen Wilcox v. Lt. Gen'l. John L. DeWitt, 144 F. (2d) 353;

Esquire, Inc. v. Walker (Postmaster General), 55 Fed. Supp. 1015.

III.

Interpleader Confers Complete Jurisdiction.

Insofar as the cross-claims in interpleader and in the nature of interpleader brought by the appellee, Title Service Company, is concerned the jurisdiction is absolute in the District Court of the district wherein the property is located. This cross-claim was filed pursuant to the provisions of the Title 28, U. S. C. Section 41 (26), March 3, 1911, c. 231, Section 24 (26), as added Jan. 20, 1936, c. 13, Section 1, 49 Stat. 1096 and Rule 22, Federal Rules of Civil Procedure. This Section (41-(26)) provides as follows:

"The district courts shall have original jurisdiction as follows:

"(26) ORIGINAL JURISDICTION OF BILLS OF INTERPLEADER, AND OF BILLS IN THE NATURE OF INTERPLEADER. Twenty-sixth (a) of suits in equity begun by bills of interpleader or bills in the nature of inter-

pleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500.00 or more or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of $500.00 or more or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500.00 or more, if—

(i) Two or more adverse claimants, citizens of different states, or claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

(ii) The complainant

(a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation in the registry of the court there to abide the judgment of the court; . . . 'Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or not identical but are adverse to and independent of one another.'

(b) Such a suit may be brought in the district court of the district in which one or more such claimants reside or resides.

(c) . . .

(d) . . .

(e) In any action at law in a United States District Court, against any person, firm, corporation, association or society such defendant may set up by way of equitable defense, in accordance with Section 398 of this Title, any manner which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or any other United States district court against the plaintiff in such action at law and one or more adverse claimants under the provisions of paragraph (a) of this sub-section or any other provision of Part I of this Title and the rules of court made thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. . . ."

This appellee, Title Service Company, availed itself of the provisions of the foregoing statute and Rule 22, F. R. C. P., together with the well established general equity practice by filing its answer and cross-claim in interpleader in the trial court on June 4, 1946. [R. 30-39.] An alias-summons was issued thereon [R. 39-40] and served upon the cross-defendants and appellants, Fahey and Ammann, in the manner prescribed by law, by the U. S. Marshall for the Southern District of California by mailing by registered mail a true and correct copy of said alias summons and answer and cross-claim in interpleader to the Attorney General of the United States at Washington, D. C., and by handing to and leaving true and

correct copies thereof with the United States Attorney at Los Angeles [R. 40-41]; and by service upon the cross-defendant and appellant John H. Fahey, as chairman of the Federal Home Loan Bank Board and as an individual, by personal service by the United States Marshal of the District of Columbia [R. 52-53] and by personal service on the appellant Ammann at Long Beach, California. In addition to the foregoing an order for service upon the absent defendant and appellant, John H. Fahey, as an individual and as chairman of the Federal Home Loan Bank Board, was obtained from the District Court on June 10, 1946 [R. 51-52] which order required said absent defendant to appear, move or answer said cross-claim in interpleader by August 19, 1946. Said order was served upon the said appellant Fahey by the United States Marshal for the District of Columbia on June 26, 1946. [R. 123-124.] By reason of the subsequent appearances in the action, coupled with the facts of service as hereinabove set forth, the jurisdiction of the trial court became complete and absolute.

The leading case covering federal jurisdiction in proceedings in interpleader, and the one most nearly in point in the instant case is that of:

Railway Express Agency, Inc. v. Jones, et al., 106 F. (2d) 341 decided by the Circuit Court of Appeals of the Seventh Circuit. The facts in that case are analogous to those in the case at bar in that a class suit was originally instituted by one Jones, who, with many other of diverse citizenship had been victims of a nationwide fraud, towit: the infamous Sir Francis Drake Estate solicitation. The proceeds of the fraud, in money, had been shipped by express and were actually in the

hands of the appellant express company when the fraud was discovered and the action filed. Jones, on his own behalf, and for the other victims, all of whose individual losses had been less than $500.00, but which aggregated in excess of $24,000.00, commenced an action against the perpetrators of the fraud and the express company. The appellant express company filed an affirmative defense by a bill in the nature of interpleader admitting the possession of the funds, admitting no interest therein, but alleging the adverse interests of the plaintiff and other members of the class represented by him on the one hand, and the claim of the Collector of Internal Revenue who had appeared in the action and asserted a claim and lien on the funds by reason of non-payment of income tax by the principal perpetrator of the fraud on the other hand, the unpaid tax being far in excess of the money held. The motion of the express company to be allowed to interplead was, by the trial court, denied, and the express company appealed. The two points raised on appeal were: (1) the right of Jones, based on the pleadings, to maintain a class suit, and (2) whether or not the express agency was within its rights in filing a counter-claim setting forth a cause of action in the nature of interpleader. The Circuit Court of Appeals held that whether or not any of the individual claimants had claims within the statutory amount, (over $500.00), the express company was entitled to file its equitable defense in interpleader and the court stated at page 344:

> "Where the possessor of funds can establish the essential and jurisdictional facts prescribed in the statute, his right to relief under this section (41) (26) is absolute."

and at page 345:

> "By proceeding under the counter-claim of the railway express the jurisdiction of the court was unassailable and the claims of all claimants may be litigated exactly the same as in a proper class suit.
>
> "It therefore follows that as a matter of wise discretion, *as well as of recognizing a right which the railway express possessed absolutely*, the court should, after the counter-claim was filed, have proceeded as provided for in the interpleader statute." (Emphasis added.)

The foregoing case is very well reasoned and appears to set at rest the question of jurisdiction in those cases anticipated by subdivision (c) of the interpleader statute, *supra*, of the rights to introduce an equitable defense in interpleader or by bill in the nature of interpleader. It likewise conclusively established the jurisdiction in the district court to take and maintain jurisdiction of all other parties to the action regardless of whether or not the court would otherwise have had jurisdiction of them. This case is likewise authority for the bringing of a class action as was filed by the plaintiffs and appellees Maltonee, *et al*.

This appellee, Title Service Co., physically deposited 174 deeds of trusts and promissory notes in the Registry of the Court. That these documents fall within the definition of "property" is very definitely established by the case of:

Omaha National Bank v. Federal Reserve Bank, 26, F. (2d) 884 wherein the contention was made that bank credits were not property within the purview of Section 118, Title 28, U. S. C., and that actual cash represented

thereby would have been "property" within the meaning of the statute. In that case the Circuit Court of Appeals held, in no uncertain terms, that the evidence of the deposit of cash, in the form of bank credits was very definitely "property."

In fact, the promissory notes secured by the deeds of trust, which were physically deposited in the Registry of the Court, were transmuted into actual cash in the course of the intervention by the Home Investment Company of Long Beach, a California corporation, as described in the statement of facts, *supra*. By the order of the trial court made on July 12, 1946, lodged with the Clerk on July 12, 1946, and filed on July 20, 1946, said Home Investment Company was allowed to, and did, deposit the sum of $774,927.90, principal, interest and costs together with interest at the rate of $95.217, per day thereafter, plus the sum of $7,972.50 as bonus due the Federal Housing Authority, plus a reconveyance fee in the sum of $435.00. Therefore, prior to the taking of the appeal this amount of money had been physically deposited with the trial court and by its order the trial court held the same in lieu of the promissory notes and trust deeds deposited by this appellee and stated that the "said amount shall remain on deposit in the registry until the further order of this court, and the rights heretofore existing of each and every party to this action, except as to the intervenor Home Investment Company of Long Beach, a corporation, its successors or assigns, be and the same are hereby expressly reserved and preserved without prejudice and shall be enforced against the said sum of deposited money to all intents and purposes as though said reconveyances had not been executed

and delivered pursuant to this order." [R. 322.] Therefore, we find that an equitable conversion has taken place and that a pure interpleader exists as to said amount of money. Subsequent to the handing down of the opinion by the trial court and prior to the entry of judgment, to-wit: on September 25, 1946, another intervention proceeding was filed by one Michael J. O'Rourke [R. 485], which intervention was completed on Oct. 7, 1946, with the making of an order by the trial court directing the deposit of the sum of $3,456.03 principal, $34.06 interest, and a reconveyance fee. [R. 513.] Since the taking of the appeal numerous other intervention proceedings have been filed, some of which have been completed, and all of which result in the payment of additional money into court and all of which affect some of the eight thousand (8,000) other promissory notes and deeds of trust brought before the court by the portion of the cross-claim by this appellee in the nature of interpleader.

Title Service Company, appellee herein, has the same rights by reason of this bill in the nature of interpleader that it had in its strict interpleader and the District Court was vested with the same jurisdiction thereby that it had by reason of the filing of the strict interpleader. By reason of the fact that under the terms of the trust imposed upon Title Service Company by the deeds of trust it is required to defend the titles to the real property conveyed to it, in trust, it has been necessary that Title Service Company continue an active participation in the course of the litigation. This in no way deprecates its position in its bill in the nature of interpleader. The fact that a party to an action does have an incidental interest, such as the interest of Title Service Company,

may take advantage of the interpleader statute. Title 28 U. S. C. Section 41 (26), *supra*, is borne out by numerous cases. One of these is the case of:

Texas v. Florida, 306 U. S. 398.

This was a case wherein inheritance taxes were sought to be collected from the estate of Green, the son of the well known Hetty Green, by the states of Texas, Florida, New York and Massachusetts. The estate itself did have an active interest by reason of the fact that it was possibly liable to the assessment and collection of inheritance taxes by any or all of the four states. However, in the opinion it was held that the estate representative was very properly a party to the action in the nature of interpleader (p. 406), admitting the liability to some one state but denying liability to all, and praying that the court determine to which state the estate was liable. Another excellent case holding that a bill in the nature of interpleader is sufficient to vest jurisdiction is:

Hunter v. Federal Life Ins. Co., 111 F. (2d) 551,

which was a dispute between parties entitled to the proceeds under a policy of life insurance on which changes of beneficiary had been requested but not completed prior to death. The life insurance company interpleaded and deposited the proceeds of the policy in court. A defense was raised of no proper interpleader. The court stated at page 556:

> "It would serve no useful purpose to discuss the sufficiency of the averments of the bill as a strict bill of interpleader, since it was clearly sufficient as a bill in the nature of interpleader, which may be maintained by one who is not a mere stakeholder."

Other cases to the same effect are:

Kohler v. Kohler, 104 F. (2d) 38;

Klaber v. Maryland Casualty Co., 69 F. (2d) 934;

Standard Surety Co. v. Baker, 105 F. (2d) 578;

Treines v. Sunshine Mining Co., 99 F. (2d) 651, 308 U. S. 66.

It is not necessary that all of the claimants even have a valid claim to the property which is the subject matter of the interpleader or in the bill in the nature of interpleader. This point was decided in the well reasoned case of;

Harris v. Traveler's Insurance Co., 40 F. Supp. 154, 157.

In that case in answer to a motion to dismiss for lack of conflicting claims the court stated at page 157:

> "It thus becomes clear that the jurisdiction of this court to entertain an interpleader bill does not depend on the validity or even bona fides of the claims of the respective defendants. It is obvious that in almost any case the claim of one of the parties will ultimately be determined to be invalid, but, however, it is a matter for determination at the trial and cannot affect the jurisdiction of the court. As we have shown, the purpose of the interpleader bill is as much to protect a stakeholder from the expense of double litigation, however groundless. That, in the opinion of the court, he will ultimately escape the latter is no ground for refusing the interpleader."

Thus it is seen that although the appellants Fahey and Ammann have claimed in the trial court that they are

in fact, the association, and that they act for and on its behalf, and that there cannot, therefore, be any conflicting claims, that the court nevertheless had jurisdiction to entertain the cross-claim of Title Service Company. Upon the showing made by this appellee, Title Service Company, that it was faced with conflicting demands by the appellants, on the one hand, and by the plaintiffs and the Association, on the other hand, it had an absolute right to avail itself of the benefits of the interpleader statute, and the trial court had no alternative other than to accept jurisdiction. Under the doctrine enunciated under the *Railway Express v. Jones*, case, *supra*, the jurisdiction conferred by the interpleader and bill in the nature of interpleader, required the trial court to accept jurisdiction as to the other parties, even though it should have decided that it had no original jurisdiction for any other reason. The pleadings of Title Service Company showed all of the necessary elements to an interpleader, to wit:

(1) Diversity of citizenship, plaintiffs and association being residents of California and the appellants Fahey and Ammann being residents of Massachusetts and Maryland, respectively;

(2) Property in issue of a value in excess of $500.00, to wit; of approximately $800,000.00, actually deposited and titles to approximately 800 parcels of real property as security for notes with an unpaid balance in excess of twelve million dollars ($12,000,000.00) being before the court; and

(3) A stakeholder whose primary interest is in the protection of the titles to the real property vested in it as trustee in its deeds of trust.

IV.

Duty of Trustee to Protect Titles.

As above set forth, under the provisions of the deeds of trust wherein this appellee, Title Service Company, is named as the trustee, it is charged with the duty of defending the title to all of the real property which is the subject matter of said deeds of trust. If, as was urged by the appellants, in the trial court, unsuccessfully, the action should have been brought in the District of Columbia rather than in California, the situs of all of such real property, the question is asked: "How would it have been possible for the various borrowers, the title to whose property was involved, to have defended the same three thousand miles from the place where such property is located" It is an elemental and rudimentary rule of law that an action involving title to real property is strictly local and the only courts having jurisdiction thereof are those in the district where the property is physically located.

V.

Court Has Jurisdiction.

In view of all of the foregoing it is respectfully submitted that the District Court of the Southern District of California, Central Division, had absolute jurisdiction of the subject matter of this action, and that the various motions made by the appellants, Fahey and Ammann, in the trial court to dismiss the same or to quash the return of the service of summons were properly denied. That these motions were properly and adequately considered

is evidenced by the minutes of the trial court for July 15 and 16, 1946, inclusive, *supra* [R. 522 *et seq.*, 539 *et seq.*], and in the Findings of Fact, Conclusions of Law and Judgment. [R. 489, *et seq.*, at p. 491-492 and p. 495-496.]

VI.

Pleadings Filed by This Appellee Raised Issues of Unconstitutionality.

The two major issues raised by the pleadings of Title Service Company were: (1) The right to the possession and control of the interplead property as between the plaintiffs and appellees, Shareholders Committee, and the officers and directors of the Association, on the one hand, and the appellants, Fahey and Ammann, on the other; and (2) the issuance of an injunction to stay the holding of an administrative hearing called by the appellant Fahey.

The issue as to the first point raised, to wit: the right to the possession of the interplead property would necessarily result from the determination of the right to an injunction as prayed for in the complaint of the plaintiffs and appellees, Shareholders Committee. This complaint definitely raised the issue of the constitutionality of Section 5 (d) of the Home Owners' Loan Act of 1933, as amended, Title 12, U. S. C. Section 1464, c. 64, Section 5, 48 Stat. 132, June 13, 1933. [R. 11-12.] Therefore, by reason of the provisions of Title 28, U. S. C. Section 380 (a) the determination of this matter required a hearing before a court composed of three judges, since the complaint prayed for injunctive relief based upon the unconstitutionality of said Section 5 (d). [R. 15-16.]

The issue as to the second point raised, to wit: The issuance of an injunction to stay the holding of an administrative hearing was precipitated by the issuance of an order for the holding of an administrative hearing, Federal Home Loan Bank Administration Order No. 5309 [R. 94-96], which would have required the holding of an administrative hearing to commence on July 3, 1946, wherein any party interested would be allowed to appear and show cause why a conservator should not have been appointed for said Association. Under the terms of this order it is further provided:

> "That after the close of the hearing the said Hearing Officer shall transmit as promptly as possible to the Secretary of the Federal Home Loan Bank Administration a complete transcript of the testimony taken together with any exhibits, briefs, or other material incorporated in the record of said hearing;" [R. 96]

That said order, by its terms, was apparently for the purpose of enabling the appellant Fahey to pass upon the validity of his own acts. At the time of the issuance of said order, the matter of the determination of the constitutionality of the Acts of Congress under which the appellants presumed to act had already been presented to the Federal District Court, Southern District of California, said order having been issued on June 5, 1946. As construed by Title Service Company, this order and hearing could have no effect other than to amount to an attempted usurpation of the power and jurisdiction of the Federal District Court to hear and determine the same matter. By reason of the fact that the cross-claim in interpleader and in the nature of interpleader had already been filed in the District Court by this ap-

pellee, and 174 promissory notes and trust deeds had already been physically deposited in the Registry of the Federal District Court, the District Court had jurisdiction of the subject matter. The subject matter included the determination of whether or not the appellant Ammann had authority to issue requests for reconveyances. Further, it was the opinion of Title Service Company that any finding or adjudication made by the Federal Home Loan Bank Administration might, and probably would, be in conflict with the judgment to be made by the Federal District Court after a hearing. That this opinion was well taken is demonstrated by the fact that the local Federal District Court did make its judgment on September 30, 1946, adjudging, among other things, that the appellants had no right or interest in or to any of the interplead property or the property which had theretofore been brought before the court by its bill in the nature of interpleader. [R. 499, par. 10.] Therefore, the holding of such administrative hearing could have no result other than to further complicate the clouded titles to the approximately eight thousand (8000) parcels of real property covered by the deeds of trust wherein Title Service Company was named as trustee and charged with the defending of said titles, and usurp the functions of the trial court. Therefore, it was incumbent upon Title Service Company to attempt to enjoin the holding of such administrative hearing. Since the order, No. 5300 *supra*, was issued pursuant to the power believed by the appellants to exist under the provisions of Section 5 (d) of the Home Owners' Loan Act of 1933, cited above in full, the enjoining of such a hearing would necessarily constitute an attack upon the constitutionality of that Act, and would necessarily be heard by a three-

judge court pursuant to the provisions of Title 28, U. S. C. Section 380 (a). Therefore, Title Service Company filed its motion to restrain the holding of such administrative hearing. [R. 253, *et seq.*] This was a right which was given to the interpleader by 28 U. S. C. 41 (26) (e), *supra*.

This order, No. 5309, was almost as much a flaunting of the jurisdiction of the courts as was "Bulletin No. 54" of the Federal Home Loan Bank Administration, *infra*.

FLAUNTING JUDICIAL AUTHORITY.

As an example of the extremes to which the appellant, Fahey has gone in the exercise of the power with which he believes he is vested in the right conferred upon him to adopt "regulations" and issue and promulgate "rules", which even go so far as to flaunt the authority of the federal courts, is his "Bulletin 54" issued on March 25, 1946, and published in the Federal Register as Document 46-4948 [R. 361-363], whereby he sought to even preclude the officers and employees of the Federal Home Loan Bank Administration from even complying with a lawfully issued *subpoena duces tecum*. A portion of that document is quoted [R. 362]:

> "All such officers and employees are hereby prohibited from giving out any official information obtained by any one of them on behalf of the Federal Home Loan Bank Administration, or any of such records, to any private person or to any local officer or *to any Court, including the production of such records or copies thereof made pursuant to their official duties, whether in response to a subpoena duces tecum or otherwise.*" (Emphasis added.)

VII.

Section 5(d) of the Home Owners' Loan Act of 1933, as Amended, Is Unconstitutional.

The section of the Home Owners' Loan Act of 1933, as amended, Title 12, U. S. C., Section 1464; c. 64, Section 5, 48 Stat. 132, under which the appellant Fahey purported to act in the appointment of the appellant Ammann, as a conservator for the Association is subdivision (d) of said Section 5. That subdivision provides as follows:

> "The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such association, including power to appoint a conservator or a receiver to take charge of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

The power to adopt regulations, referred to in subsection (d) is contained in subsection (a) of said Section 5. This subsection provides as follows:

> "In order to provide mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes the board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations' and to issue charters therefor, giving primary consideration to the best practices of local, mutual, thrift and home financing institutions."

It must be noted from a most casual reading of said sub-section (d) that no provision of any kind or nature is made for any hearing before any judicial or quasi-judicial tribunal before the doing of any act set forth in said sub-section, including the appointment of a conservator, and no provision is made for any review of such acts, including the appointment of a conservator, by any judicial or quasi-judicial body. The matter is left entirely within the power of the board to legislate as it may see fit in that it is given unlimited power to "provide in the rules and regulations herein authorized . . . including power to appoint a conservator." No limitation is placed upon that power and no conditions precedent are made as a basis for the exercise of the power. This certainly amounts to an unlawful delegation of legislative authority and is a violation of the inherent constitutional prohibition against unlimited delegation of legislative authority. These subdivisions, (a) and (d), of Section 5 of the Act attempt to delegate legislative functions without providing any statement of policy, standards, limitations, or any criteria, to guide an administrator or the Board in exercising such legislative functions, all of which is contrary to Article I, Section 1, and Article I, Section 8, clause 18 of the Constitution of the United States of America.

Some of the "land mark" cases dealing with and disposing of this position are as follows:

A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. 495;

Panama Refining Co. v. Ryan, 293 U. S. 388;

Ohio Valley Water Co. v. Ben Avon Burrough, 253 U. S. 287;

Wichita Railroad & Light Co. v. Public Utilities Comm., 260 U. S. 48;

Morgan v. United States, 304 U. S. 1;

Butler v. United States, 297 U. S. 1;

Carter v. Carter Coal Co., 298 U. S. 238;

Yick Wo v. Hopkins, 118 U. S. 356;

Coe v. Armour Fertilizer Works, 237 U. S. 413.

Of the cases cited above the following are probably the most nearly in point in the instant litigation.

Ohio Valley Water Co. v. Ben Avon Burrough, 253 U. S. 287. This was a case involving rate making by the public service commission of Pennsylvania. The State Supreme Court of Pennsylvania had held the Act to be constitutional but this holding was reversed in this Court on the question of a mandatory right to a judicial review being required to establish the constitutionality of the Act. In its decision at page 289 the court stated:

> "Looking at the entire opinion we are compelled to conclude that the Supreme Court (State) interpreted the statute as withholding from the courts power to determine the question of confiscation according to their own independent judgment when the action of the commission comes to be considered on appeal,"

and at page 291:

> "Plaintiff in error has not had proper opportunity for an adequate judicial hearing as to confiscation; and unless such an opportunity is now available and can be definitely indicated by the Court below in the exercising of its power to finally construe the laws of the state, the challenged order is invalid."

Thus it is seen that the absence of an adequate opportunity for a hearing being provided in the statute of a state, that the statute is invalid, being a deprivation of property without due process of law.

Another case in which the decision of a state court was under review in a matter involving a statute which purported to delegate legislative power, the power to make regulations, but which did not provide adequate safeguards or guides is:

Wichita Railroad and Light Co. v. Public Utilities Comm., 260 U. S. 48,

wherein the court states at pages 58-59:

> "The maxim that a legislature may not delegate legislative power has some qualifications, as in the creation of municipalities, and also in the creation of administrative boards to apply to the myriad details of rate schedules and the regulatory police power of the state. The latter qualification is made necessary in order that the legislative power may be effectually exercised. In creating such an administrative agency, the legislature, to prevent it being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function. It is a wholesome and a necessary principle that such agency must pursue the procedure and rules enjoined, and show a substantial compliance therewith to give validity to its action."

From the foregoing quoted portion of this decision it is evident that the legislature must first provide for the making of regulations and set up the standards which the regulations must follow and that an administrative agency must show a substantial compliance with the rules set forth

by the legislative body. In the present case no standard whatsoever has been established and the power has been left in the Federal Home Loan Bank Administration apparently in the person of its Commissioner, the appellant Fahey, to make any and all regulations which he might see fit. This is a clear and absolute disregard for the constitutional provisions requiring the setting of standards.

An excellent discussion and reasoning of the effect of the failure of the legislative body to set up the necessary safeguards is that contained in:

Morgan v. United States, 304 U. S. 1.

The case itself did not go up on appeal by reason of the failure of the statute to provide the necessary safeguards, but upon an abuse of those safeguards in the administration of the statute. However, it does point out with great particularity what such safeguards and standards must be. It is a case wherein the Secretary of Agriculture, after the holding of very extensive hearings in connection with the establishment of prices for live stock, undertook to make the rate without due consideration for the facts adduced at the hearings themselves. As stated at page 14:

> "The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with direcly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system of adherance to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in quasi-judicial proceedings the liberty and property of the citizen shall be protected by

> the rudimentary requirements of fair play. These demand a 'fair and open hearing' essential alike to the validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard' . . . . and in equipping the Secretary of Agriculture with extraordinary powers under the Packer's and Stockyards Act the Congress recognized and emphasized this requirement by making his action depend upon 'FULL HEARING'." (Emphasis by the Court.)

The following language which appeared on page 17 might well be used in referring to the power to appoint a conservator:

> "but a 'full hearing'—a fair and open hearing—required more than that. The right to a hearing embraces not only the right to present evidence, but also the opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be a barren one. Those who are brought into contest with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposals before it issues its final command."

Even if the provisions of Section 5(d) of the Home Owners' Loan Act of 1933 had included as a condition precedent, the holding of an administrative hearing, upon which it is entirely silent, the foregoing language would have been most applicable to it. However, since the Act did not contain any such provision, and in the exercise of its legislative power claimed to have been conferred upon

it by said sub-section, the Federal Home Loan Bank Administration attempted to supply the same by providing its own administrative hearing. Without admitting that such an administrative hearing, if provided for to be held prior to the appointment of a conservator, would have in any way strengthened the position of the appellants, it is definitely noted and the attention of the court is invited to the fact that such administrative hearing is only provided for after the seizure of the property by a conservator. The following language taken from page 22, is illustrative of what an act should contain which purports to make such delegation of legislative discretionary power as does that in the instant case:

> "The maintenance of proper standards on the part of administrative agencies in the performance of the quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concept of fair play."

That there was not only a total absence of any requirement for a hearing prior to the appointment of a conservator of this fully solvent institution, as is seen from an inspection of said section 5(d) of the Home Owners' Loan Act, but that the manner in which the seizure was accomplished was the absolute opposite of that contemplated by the Supreme Court in the foregoing language is evidenced from the affidavits of Keith Linden [R. 62-72], Ben O. Reddick [R. 73-75], T. A. Gregory [R. 118-123].

Another case wherein an Act of Congress has been declared to be unconstitutional because of the attempted improper delegation of legislative powers to an executive officer, the Secretary of Agriculture is the case of:

Butler v. United States, 78 F. (2d) 1, affirmed in 297 U. S. 1,

wherein the Agricultural Adjustment Act was held to be unconstitutional. The following statement of law appears on page 9 of the opinion of the Circuit Court of Appeals:

> *"The powers to determine what the law shall be, what property shall be affected by taxation or regulation and what standards shall govern the administrative officers in administering acts of Congress has never been held to be an administrative function.* The power to impose a tax and to determine what property shall bear the tax can only be determined by the legislative department of the government. If Congress undertakes to lay down a guide for administrative officers to enforce it in carrying out its mandate, it must be by an intelligible and a reasonably definite standard." (Emphasis added.)

Another act which was held to be unconstitutional by reason of an insufficient safeguard for the adoption of regulations by an administrative body was the Bituminous Coal Conservation Act of 1935 (49 Stat. 991, C. [redacted]). This act was held unconstitutional in the case of:

Carter v. Carter Coal Co., 298 U. S. 238.

In commenting upon the purpose of the legislation the court stated at page 291 as follows:

> "Beneficent aims, however great or well directed, can never serve in lieu of Constitutional Power."

Following this decision the Act was reenacted with appropriate standards and criteria, "Bituminous Coal Act of 1937 (50 Stat. 72) and in the case of *Sunshine Coal Co. v. Adkins,* 310 U. S. 381, was subsequently held to be constitutional. As re-written the act is a good example of properly drafted legislation as it provides the necessary safeguards of due process, notice and hearings prior to the adoption of rules and regulations and also notices of charges, opportunities to be heard, and impartial hearings together with the right to judicial review. Undoubtedly, had the act here under attack contained only a provision for a notification of charges prior to the appointment of a conservator and a judicial review following the appointment of a conservator the same would have been constitutional. However, the absolute lack of due process by the failure to provide for any notice, hearing or judicial review in the act itself is fatal.

One of the most famous cases on the question of unlawful and unlimited delegation of legislative power is the case of:

Yick Wo v. Hopkins, 118 U. S. 356.

This case is undoubtedly a landmark in American judicial history and does not need digesting or citation for the benefit of this Court. As the Court will so well recall, it is the case involving the plaintiff, Yick Wo, and approximately 80 other Chinamen, all aliens, who operated laundries in the City of San Francisco. The San Francisco ordinance gave unlimited authority to the licensing authorities to grant or deny licenses and, under this authority, the Chinese were denied licenses although all Caucasian applicants, with one exception, were granted licenses. This court held, in no uncertain terms, that the ordinance was

unconstitutional and discriminatory as it conferred (p. 366):

> "Not a discretion to be exercised upon the consideration of circumstances of each case, but an ordinance granting power to give consent not only as to place but as to persons."

This was one of the cases which again enunciated the principal "ours is a government of laws and not of men," which has been carried down from the days of Thomas Jefferson and was most recently included in the opinion of Mr. Justice Frankfurter in the case of *United States v. United Mine Workers* (91 L. Ed., Adv. Op. 595).

Another case which bears particularly upon the subject of due process of law, and the possible attempt to cure the same by the voluntary granting of an "administrative hearing," and in which the language is strictly apropos is:

Coe v. Armour Fertilizer Works, 237 U. S. 413.

This case involved the constitutionality of Section 2677 of the Florida General Statutes of 1906, as amended, which provided that judgments against corporations could be converted into judgments against stockholders in those corporations, without a hearing, was unconstitutional as it permitted the taking of property without providing due process of law and the opinion also set forth the doctrine that the notice must be provided in the statute. In that opinion it was stated:

> "Thus construed, and as applied in this case, we think Section 2677 is repugnant to the 'due process of law' provisions of the Fourteenth Amendment, which requires at least a hearing, or an opportunity to be heard, in order to warrant the taking of one's prop-

erty to satisfy his alleged debt or obligation; and in our opinion the other sections do not adequately supply the defect."

". . . To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result as he had no defense upon the merits. (Reese v. Watertown, 19 Wall. 107, 123; 22 L. Ed. 72, 77.)

"Nor can extra-official or casual notice, or the hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires. In Stuart v. Palmer, 74 N. Y. 183, 188, 30, Am. Rep. 289, which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, 'it is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. *The law must require notice to them and give them the right to a hearing and an opportunity to be heard.*'" (Emphasis by the court.)

Another case with very pertinent language is that of:

Security Trust and S. B. Co. v. Lexington, 203 U. S. 323, 333,

wherein the court, speaking through Mr. Justice Peckham, stated:

"If the satute did not provide for a notice in any form it is not material that as a matter of grace or favor, notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is whether any notice is provided for by the statute."

In one of the later cases and one very nearly here in point on the question of the sufficiency of an act of Congress, or the insufficiency thereof, in attempting to delegate unauthorized legislative power, is that of:

Panama Refining Co. v. Ryan, 293 U. S. 388.

This case originated as an action to restrain the Secretary of the Interior from the enforcement of certain provisions having to do with the transportation in interstate commerce of petroleum and petroleum products in excess of the amount allowed to be produced under state regulations, the regulations having been authorized in the National Industrial Recovery Act. There, as in the case at bar, one section purportedly authorized the administrative officer to do certain acts and a prior section set forth the general purposes and polices of the Act, even as subsection 5(d) of the Act here under consideration purports to authorize the adoption of regulations and subsection 5(a) sets forth the purposes and policies of the Act. There, as here, it was claimed that the Act contained an unconstitutional delegation of power without the setting of sufficient standards, safeguards, curbs or other criteria, and, there as here it was sought to read into the empowering section such standards from a consideration of the policy stating section which preceded it. The following quoted portions of the opinion written by Chief Justice Hughes bear directly on that subject, p. 415:

> "Section 9(c) does not state whether, or in what circumstances or under what conditions, the President is to prohibit the transportation of the amount of petroleum or petroleum products, produced in excess of the states' permission. It establishes no criteria to govern the President's course. It does not

require any finding by the President as a condition of his action. The Congress in Sec. 9(c) thus declares no policy as to the transportation of the excess production. So far as the section is concerned it gives the President unlimited authority to determine the policy as to lay down the prohibition, or not to lay it down, as he sees fit."

In commenting on the policy provisions of the act, the Court might well have been speaking of the statute here under consideration when it stated at page 418:

"The Congress left the matter to the President without standard or rule to be dealt with as he pleased. The effort by ingenious and diligent construction to supply a criterion still permits such a breadth of authorized action as essentially to commit to the President the functions of a legislature rather than those of an executive or administrative officer executing a declared legislative policy. We find nothing in section 1 which limits or controls the authority conferred by section 9(c)."

In applying the foregoing quotation to the policy provided by section 5(a) of the Home Owners' Loan Act we find the only policy there established is "giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States." Certainly, if standards set by a state in the limitations of the production of petroleum and petroleum products within the confines of its own borders is not considered as being sufficient, a broad and meager reference to "the best practices of local mutual thrift and home financing institutions in the United States" is too broad to be a sufficient guide or curb on the administrative officer seeking to apply them.

May it be said that such best practices in Maine are the same as those in California or that the practices in a congested metropolitan area in the east is the same as that in the far west where communities are expanded in size and where tenements are virtually unknown?

Again, the opinion in the *Panama Refining* case bears upon the contention of the appellants heretofore made before the trial court in both oral and written argument that the Commissioner might be depended upon to administer the act in good faith and good conscience. At page 420 it is said:

> "The question whether such a delegation of legislative power is permitted by the constitution is not answered by the argument that it will be assumed that the President has acted, or will act, for what he believes to be the public good. *The point is not one of motives but of constitutional authority, for which the best of motives is not a substitute.* While the present controversy relates to a delegation to the President, the basic question has a much wider application. If the Congress can make a grant of legislative authority of the sort attempted by section 9(c), we find that nothing in the Constitution which restricts the Congress to the selection of the President as grantee. The Congress may vest the power in the officer of its choice or in a board or commission such as it may select or create for the purpose." (Emphasis added.)

The foregoing quoted portion of the decision sounds almost as though the Honorable Chief Justice might have had the instant case before him because in the case here before the Court the attempt was made by Congress to vest unrestrained and unfettered legislative powers in a

board consisting of five men but which board, was following the adoption of the First War Powers Act, abolished, and its functions vested in one man, as a Commissioner, the appellant Fahey. In further commenting upon the same point it was stated at page 421:

"The Constitution provides that

> 'All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives.' Article I, Section 1.

and the Congress is empowered

> 'to make all laws which shall be necessary and proper for carrying into execution its general powers.' Article I, Section 8.

"The Congress manifestly is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. Undoubtedly legislation must be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicability, which will enable it to perform its functions in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules *within prescribed limits*, and the determination of the facts to which the policy is declared by the legislation to apply. Without capacity to give authorization of this sort we would have the anomoly of a legislative power which in many circumstances calling for its exertion would be a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of the administrative authority which has been developed by means of them,

> cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained." (Emphasis added.)

Thus, it can readily be seen from the foregoing case that it matters not what regulations may be, in fact, adopted by an administrative body or commissioner, nor what the motive may be in the administration thereof, that all are outside the pale of the administrative or executive authority unless the Act of Congress under which the duties are purportedly performed and the regulations purportedly adopted, in its own structure and terms, prescribed the limit in which the operations must be confined.

A highly pertinent question was asked in the course of the hearing before the three-judge court and the answer given by the Assistant United States Attorney is indicative of the fallacy in the Act itself. In the course of the continued hearing on July 16, 1946, the question was asked by the Honorable Peirson M. Hall, District Judge:

> "I am referring to the Act here under consideration in this case. Is there anything in this Act which says they shall appoint a conservator in interests of the stockholders?"

To which, the Assistant United States Attorney answered:

> "We will have to look at Section 5(d) again. I cannot stretch it any farther than it goes." [R. 668-669.]

Probably the most pertinent case bearing upon the instant question is that of:

> *A. L. A. Schechter Poultry Co. v. United States*
> 296 U. S. 495.

As that case was a landmark in the field of industrial relations so also will the case now before the Court be a landmark in the field of Savings and Loan Institutions and home financing throughout the breadth of the country. That case is most illuminating by reason of the fact that in passing upon the constitutionality of the National Industrial Recovery Act and in finding it to be unconstitutional the court, again speaking through the Chief Justice, Mr. Justice Hughes, compared the provisions of that Act with those of other Acts which had been held to be constitutional in delegating legislative powers, but in so doing had established adequate guides, criteria and safeguards in the Acts, whereby the actions of administrative and executive agencies were controlled. In digesting the portion of the act under consideration the Court stated at pages 523-524:

> "As a condition of his approval, the President may Impose such conditions (including requirements for the making of reports and the keeping of accounts for the protection of consumers, competitors, employees and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared.'
>
> "Where such code has not been approved, the President may prescribe one, either on his own motion or complaint."

and further on page 525:

> "The President approved the code by an executive order in which he found that the application for his approval had been duly made in accordance with the

provisions of Title I of the National Industrial Act, that there had been due notice and hearings," etc.

In comparing the National Industrial Recovery Act with the Federal Trade Commission Act the Court, at page 533 pointed out that in the Federal Trade Commission Act:

> "Congress set up a special procedure, a commission, a quasi-judicial body was created. Provision was made for formal complaint for notice and hearing, for appropriate findings of fact supported by adequate evidence and for judicial review to give assurance that the action of the commission is taken within its statutory authority."

but the National Industrial Recovery Act had no such safeguards. Neither does the portion of the Home Owners' Loan Act here under consideration for as the court said:

> "For a statement of the authorized objective and content of the 'codes of fair competition' we are referred repeatedly to the 'declaration of policy' in Section 1 of Title 1 of the Recovery Act."

after which the court then went on to hold the same to be insufficient albeit they are broader than the provisions of Section 1(a) of the Home Owners' Loan Act. As to the legality of such delegation of powers the court stated at page 537:

> "The answer is obvious. Such a delegation of legislative power is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress."

The language used in commenting on the vast and sweeping powers conferred upon the President to make and approve "Codes" might very well have been directed to the power to make and amend regulations conferred upon the Federal Home Loan Bank Board and its successor, the Federal Home Loan Bank Commissioner (the appellant Fahey), where the court said at page 539:

> "Such a sweeping delegation of legislative power finds no support in the decisions on which the government especially relys."

In comparing the National Industrial Recovery Act with the Radio Act of 1937 the court pointed out that a provision in the latter act for hearing to establish the requirements of public, commercial interests or necessity and a judicial review thereof; and in comparing the same with the provisions of the Tariff Act of 1922, pointed out that the Congress had set up as a standard for tariffs, to be determined by an administrative body, a basis for actual computation as the difference between the cost of production and transportation of foreign made goods and the cost of producing and selling comparable goods in the United States, and provided for a judicial review of such findings, citing the case of:

Hampton v. United States, 276 U. S. 394.

The reference to the *Schechter* case is concluded with the following quotation from that case, and it is respectfully submitted that if the word "regulations" were substituted for the word "codes" and the reference to the

"few restrictions" were deleted that the language applies absolutely in the instant case. Page 541:

> "To summarize and conclude on this point: Section 3 of the Recovery Act (Section 5(d) of the Home Owners' Loan Act) is without precedent. It supplies no standards for any trade industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes (regulations) to prescribe them. For that legislative procedure, Section 3 (Section 5(d)) sets up no standards aside from the general statement of the aims of rehabilitation, correction and expansion described in Section 1 (Section 5(a)). In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President (Board or Commissioner) in approving the prescribing codes (regulations), and thus enacting laws for the government of trade or industry throughout the country is virtually unfettered, we think the code (regulation) making authority thus conferred is an unconstitutional delegation of legislative power." (Interpolations added.)

It is also worth noting, in passing, that both the National Industrial Recovery Act, held to be unconstitutional in the *Panama Refining* case and the *Schechter* case, were passed at the same session of Congress as was the Home Owners' Loan Act of 1933, and at a time when the country was suffering from an intolerable depression and when remedial legislation was being enacted in volume and at breakneck speed without too much attention being paid to detail or the necessary safeguards.

In the opinion rendered in court below the learned Senior Judge, the Honorable William E. Orr, Circuit Judge, speaking for the court, referred to the two cases above cited and digested and in that opinion states:

"It is agreed that functions of the legislature may not be delegated by the Congress to any executive or executive department, hence, there is posed a single question for determination, to wit: Has the Congress made such a delegation in the sections of the Act under consideration? Fortunately the course to be followed in determining questions of this character has been well chartered by the Supreme Court of the United States. We have but to endeavor to make the proper application of the principles of said Court enunciated to the conditions existing in the matter before us. We refer, particularly to *Panama Refining Co. v. Ryan*, 293 U. S. 388, and *Schechter v. U. S.*, 295 U. S. 495. We look to the statute to see whether the Congress has declared a policy with respect to the providing of rules and regulations for the reorganization, consolidation, merger or liquidation of federal savings and loan associations, including the power to appoint a conservator or receiver to take charge of the affairs of any such association and to require an equitable readjustment of the capital stock of the same; and to release any such association from such control and permit its further operation; whether the Congress has set up as standard for the President's (board's) action; whether the Congress has required any finding by the President (board) in the exercise of the authority to do the things enumerated in section 5(d) of the Act (*Panama Refining Co. v. Ryan, supra*, p. 415.) It may be said of section

5(d), as was said in the section involved in the Panama Case; it is 'brief and unambiguous.' It makes no attempt to lay down rules for the guidance of the board nor does it state in what circumstances or what conditions the board is to merge institutions or appoint a conservator or receiver. It establishes no criterion to govern the board's course. It does not require any finding by the board as a condition of its action. No policy is declared by Congress as to merger, or appointment of conservator. The section gives to the board unlimited authority to formulate rules for the board's action in the respects mentioned and to do so as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to govern itself. We are unable to find in the Act a declaration of policy or standard which can be deemed to relate to the subject of section 5(d)." [R. 376-377.] (68 F. Supp. 418-420.)

From all of the foregoing cited and digested cases it is graphically apparent that Section 5(d) of the Home Owners' Loan Act is unconstitutional by reason of the fact that it does not provide for the due process of law provided for and anticipated by the Fifth and Fourteenth Amendments of the Constitution of the United States, and is therefore, contrary to those amendments to the Constitution; and that since no safeguards, standard, criteria or curbs of any kind or nature are established in the statute in the granting of unlimited and

unfettered power to the Federal Home Loan Bank Board to adopt regulations, that it is further unconstitutional being violative of Article I. Section 1, and Article I, Section 8, Clause 18 of the Constitution. Therefore, since the power sought to be delegated by the Congress to the Federal Home Loan Bank Board, by said section, was beyond the scope of its power, any purported regulations enacted or adopted thereunder are entirely void and it follows as a necessary consequence that the act of appointing a purported conservator pursuant to the claimed power in a void regulation makes such appointment an idle act and entirely without legal foundation. Hence, the conservator must be considered only as a trespasser and any acts done by him are of no effect and void *ab initio.*

The foregoing arguments also effectively dispose of the contention made in the court below by the appellants, Fahey and Ammann, that the trial court was without jurisdiction to entertain any proceedings or hear the matter unless and until the appellees, and all of them, should have submitted to the "administrative hearing" proposed by the appellant Fahey in the regulations, to pass upon the validity and propriety of his own acts.

As herein demonstrated, unless the hearings be provided in the statute itself, unless they be before a disinterested, fair and impartial tribunal, and unless they be made subject to judicial review, all by statutory enactment, they are of no effect.

VIII.

Position of Title Service Company How Affected by Judgment.

The borrowers from the Association have, by their execution of deeds of trust naming this appellee, Title Service Company, as trustee, reposed in said trustee the confidence and trust of such borrowers for the protection of the titles to the real property which such borrowers have hypothecated as security for the payment of their loan to the Long Beach Federal Savings and Loan Association. [R. 402, par. 3.] Therefore, it is incumbent upon this appellee to protect the titles to said real property from further clouding by the acts of the appellant Ammann, and from the consequences of the acts of his superior, the appellant Fahey. At the time all of the loans were made, prior to May 20, 1946, the date of the seizure of the assets of the Association by the appellants Fahey and Ammann, all of the loans were payable at the office of the Association in the City of Long Beach, State of California, at which place the borrowers could, if they wished, see their original documents and insist upon the endorsement of their payments upon their loans on the original notes. That on or about the 29th day of March, 1946, the appellants Fahey and Ammann, arbitrarily and without notice and purporting to act under the power conferred by Section 5(d) of the Home Owners' Loan Act, seized possession and control of the Federal Home Loan Bank of Los Angeles, merged the same with the Federal Home Loan Bank of Portland, and dissolved the Federal Home Loan Bank of Portland, as merged with the Federal Home Loan Bank of Los Angeles, with the Federal Home Loan Bank of San Francisco which had not theretofore existed but which was created on that

day. All of these acts were contemporaneous. [R. 7 and 8.] All of the foregoing was accomplished by the issuance of Federal Home Loan Bank Administration Order Nos. 5082, 5083 and 5084. [R. 293-295.] That contrary to any knowledge that any of such borrowers might have had at the time of the execution of their respective deeds of trust, and in their dealings with the Association, promissory notes and deeds of trust aggregating the approximate amount of $7,000,000.00 have been deposited with the purported Federal Home Loan Bank of San Francisco by the appellant Ammann. [R. 396.] Such deposits were made as collateral for loans made by the purported Federal Home Loan Bank of San Francisco to said appellant. As to whether or not said documents are still on deposit, as such collateral, with said Federal Home Loan Bank of San Francisco, or whether the same are on deposit at its Los Angeles Branch, its Portland Branch, or in San Francisco, cannot be known to such borrowers. It may very well be that such securities have been re-hypothecated by said Federal Home Loan Bank of San Francisco with some other financial institution within or without the jurisdiction of the Federal District Court of California. As a consequence of these facts it has been and is highly essential that this appellee, Title Service Company, use its utmost efforts on behalf of such borrowers to insure that their property rights are not violated, and that they be not placed in double jeopardy in the making of the payments on their loans.

Even had the purported appointment of the appellant Ammann as the alleged conservator for said Association been a valid appointment, his acts in such capacity have been such as to disqualify him from continuing in such

position. One example of his maladministration of his office is the attempted cancellation of a promissory note and deed of trust executed by one M. C. Stanford and Frances J. Stanford by mutilating said documents by tearing therefrom the signatures of such persons, notwithstanding the fact that said deed of trust had theretofore been recorded in the office of the County Recorder of Los Angeles County, California, and become a lien on the property of said persons. [R. 400; 401-408.]

IX.

The Court Properly Made a Final Decree and Granted a Preliminary and Permanent Injunction.

The assignments of error, Nos. 12 and 13 of appellants' opening brief, are that the court erred in granting temporary and permanent injunctions without any hearing whatsoever upon their issuance and without any hearing or trial upon the facts. It is respectfully submitted that upon the arrival by the trial court at the conclusion that Section 5(d) of the Home Owners' Loan Act of 1933 was unconstitutional and that, as stated in its opinion:

> "Authority to do the acts sought to be restrained if found to exist, must be bottomed on subsection (d) of 5 of the Federal Home Loan Bank Act, as amended." [R. 374-375.] (68 F. Supp. 418, 419.)

That nothing but useless and expensive delay could result by the issuance of a preliminary injunction only and that the court, not only had jurisdiction to, but most properly did, issue a permanent injunction giving the relief ultimately prayed for in the complaint and in the cross-claim of this appellee, to wit: (1) the restoration

of the assets and management of the Association to its officers and directors, and (2) the determination that the appellants had no right, title or interest in or to any of the interplead property. To have done otherwise would have worked continued irreparable injury and damages to the multitudinous borrowers, the titles to whose real property is clouded as a result of the act of the appellants Fahey and Ammann.

One case definitely bearing upon this question, although referring specifically to patent and trademark law, and which most aptly expressed the reasons for the issuance of a permanent injunction upon the hearing of the motion for a preliminary injunction is:

Coca-Cola Co. v. Los Angeles Brewing Co., 1 F. R. D. 67,

wherein the Honorable Paul McCormick, the trial judge, stated:

> "There is, however, a fixed principle in patent law and I dare say it is applicable to trademark litigation as well. It has been applied in many cases by this court. It operates where there isn't anything to be gained by prolonging litigation *except to afford to one or the other of the litigants a respite and moratorium to suspend the enforcement of rights;* but that is no safe criterion in determining the course the court should follow on an application for a preliminary injunction. It usually applies in patent litigation where there has been a prior adjudication validating a patent and the only question at issue is one of infringement. There the situation can be arrived at generally, except in so far as the question of infringement is concerned, just as securely and much more satisfactorily on the preliminary application

as it can by a trial after a long hearing, expensive both as to time and to money.

What is there that can be modified or changed or that needs any further exploration? What factual situation is there that could be any more definitely presented to the court in January than today? I think there is nothing. There may be many more affidavits filed on each side of the question. There may be a great deal of oral testimony developed on both sides of the issue. There may be extensive arguments made as to the effect of these matters but, upon analysis, the same issue will be presented. If that is the case, it should be determined summarily." (Emphasis added.)

The foregoing language is equally adaptable to the issues in the case at bar. In following the inquiries raised by Judge McCormick's opinion, it might here be asked: What bearing could any facts have to do with the validation of an unconstitutional statute? As was stated in the *Schechter* case, *supra*, it matters not what beneficent motives may underly the adoption of a code or regulation, if there is no constitutional foundation for the adoption of such code or regulation, the best of motives cannot cure that defect. Therefore, regardless of how prolonged the litigation might be, regardless of how many witnesses might be heard, the ultimate outcome could only be the same, *i. e.*, that the appellant Fahey was without power to appoint a conservator, and that the appellant Ammann, as such purported conservator, is only a trespasser and without rights of any kind or nature. Insofar as the appellee Title Service Company is concerned, and the borrowers whose trust it represents, such a prolonging of a litigation can only result in fur-

ther untold hardship, damage and irreparable loss. Since many of these borrowers are ex-service personnel who have already lost from two to five years of their own rights to the enjoyment of private life, such prolonging of the litigation could only add to their hardships in precluding them from obtaining the benefits of the so-called "G. I. Bill of Rights." Since the acts of the appellants, both Fahey and Ammann, have deprived them of the ability to obtain clear title to the real property upon which their homes, for which they so valiantly fought are built, and the right to purchase homes, because no clear titles can be obtained which may be used as security for the loans to be guaranteed for them under the "G. I." Bill.

The right of a Federal Court, sitting in equity, once having assumed jurisdiction to give a complete remedy and to issue a permanent injunction upon the hearing upon the motion for a preliminary injunction is not a point *de novo*. It has been decided by this court in the case of:

Sterling v. Constantin, 287 U. S. 378,

wherein this court in the person of Chief Justice Hughes, in affirming the order of a three-judge statutory court in granting an interlocutory and permanent injunction, even as was done by the court below in this proceeding, restrained the governor and certain military officials of the State of Texas from enforcing military orders restricting the production of plaintiffs' oil wells, stated at page 393 as follows:

> "The jurisdiction of the district court so constituted and of this court upon appeal, extends to every question involved, whether of state or federal law,

and enables the court to rest its judgment on the decision on such of the questions as in its opinion effectively dispose of the case."

The attention of the court is respectfully directed to the fact that issues of fact have not been raised by the pleadings and that the sole question before the court is one of law, to wit: the constitutionality of that section of the Home Owners' Loan Act under which the appellants have assumed to act.

Another case wherein an interlocutory and final judgment was entered by the trial court upon an application for the preliminary or interlocutory injunctions was that of:

Allegheny Oil Co. v. Snyder, et al., 106 Fed. 764. (Certiorari denied in 181 U. S. 618.)

That case was one wherein a preliminary injunction was sought to stay the rights of the lessee under an oil lease executed subsequent to the lease held by the complaining party. At the hearing, and in previous hearings in the state court, the first lease was held to have been valid and therefore the attempted second lease had necessarily failed. In its opinion the Court stated:

"In such cases in courts of the United States may proceed to administer final relief without putting the parties to the expense and delay of protracted litigation. Mast, Foos & Co. v. Stover Mfg. Co., 177 U. S. 485, 20 S. C. 708, 44 L. Ed. 856, citing with approval, Cardt v. Brown, 113 Ill. 475; Green v. Mills, 16 C. C. A. 516, 69 F. 852, 25 U. S. App. 383; and the decision of this court in Mayor etc. of Knoxville v. Africa, 23 C. C. A. 252, 77 F. 501, 47 U. S. App. 74. Finding no error in the decrees entered in the court below, the same will be affirmed."

X.

The Provisions of the Home Owners' Loan Act Are Separable.

The case now before the Court is not the first proceeding in which a section of the Home Owners' Loan Act of 1933, as amended, has been attacked for unconstitutionality. That the provisions of the Act are separable and that no great harm would come to the Act as a whole by the holding that Section 5(d) is invalid is definitely demonstrated by the case of:

Hopkins Savings Association v. Cleary, 296 U. S. 315.

In the *Hopkins* case Section 5 (i) of the same Act was held to be unconstitutional. That sub-section was one which attempted to allow savings and loan associations which had been organized under the laws of a state to convert to Federal Savings Loan Association upon the vote of a sufficient number of its members, but without the consent of the state under the statutes of which it had been created. In holding this sub-section to be unconstitutional this Court held such provision to be an invasion of the rights reserved to the states.

Even though it may be here contended, as it was in the court below, that the invalidating of sub-section 5(d) would result in the crippling of the Federal Home Loan Bank Administration by depriving it of its supervisory powers; it is submitted that the doors of all of the federal courts are still open to such administrative body and that in case facts should be developed by an examination of any Federal Savings and Loan Association which would warrant the appointment of a receiver or a conservator

that such might be done upon a proper application to any such court. Of course, this would require the application to the courts which has been so assiduously avoided in the instant proceeding and would require that an actual showing of facts would have to be presented to establish the right to have a federal court intercede and a bald statement of conclusion would not be sufficient. Such a statement as was used in this case, Federal Home Loan Bank Administration Order No. 5254 [R. 300] transmitted by telephone as set forth in the affidavit of the appellant Ammann [R. 296-297], would be entirely insufficient. However, the parties accused would have an opportunity to be heard in a fair and impartial tribunal and the conservator or receiver appointed would be under the jurisdiction and control of the local federal District Court, at or near the seat of the association involved, and not some 3000 miles removed from the directing authority, the appellant Fahey, as in the instant case.

XI.

Reply to Appellants' Opening Brief.

It is rather difficulty to adequately answer the opening brief of the appellants by reason of the fact that the great majority of it is apparently directed to all of the appellees indiscriminately, with the hope that some of it will affect all of them. The only specific portions of the same directed to the appellee, Title Service Company, are the three pages appearing at pages 95-97, inclusive. However, in reading the brief there appear to be so many broad statements that might be construed as applying to this appellee that it is deemed necessary to comment on many of them. Therefore, this rebuttal will be directed largely to the

points in the order in which they are raised in the opening brief.

In the general statement it is noted on page 5 that the original charter of the Association is referred to in a quotation made, and from which it is stated that, in that charter, it was provided that the Association should at all times be subject to the provisions of the Home Owners' Loan Act of 1933, and, "to any amendments thereof, and to valid rules and regulations made thereunder." The key word in this statement is the word *"valid."* Undoubtedly, if Section 5(d) of the Home Owners Loan Act had made adequate provision for the adoption of rules and regulations and had prescribed the necessary criteria, notice and review, there could have been no objection to them.

A significant omission appears in the statement on page 9 with reference to the filing of its cross-claim by the Title Service Company. The only reference there made is to the deposit in the Registry of the Court of 174 deeds of trust and requests for reconveyance, executed by the appellant Ammann. No mention is made of the portion of the cross-claim which was a bill in the nature of interpleader which brought before the Court the approximate 8000 other deeds of trust wherein this appellee was named as the trustee, which deeds of trust secured a large number of promissory notes with a total approximate balance due of $12,000,000.00, or almost one-half of the assets of the Association. [R. 36-37.]

It is true that this appellee filed a motion for a temporary restraining order and for a preliminary injunction to restrain the holding of an administrative hearing

by the appellants Fahey and Ammann. This has been treated in more detail in the opening of this brief (*supra*, p. 33).

Any reference to the summary of the argument will be omitted by reason of the fact that the same matter is covered in the argument itself.

A.

Appellants' Point I(A).

In the argument it is stated, page 27, that the appellees have cluttered the case and record with a conglomerate of unproven and untried charges. The attention of the Court is invited to the fact that at no place in the record are any of these allegedly unproved and untried charges denied. Under Point I it is sought to be shown under Subdivision A, that the appellees should have exhausted their administrative remedy prior to the appealing to the Federal District Court for relief. As herein above set forth, the "administrative hearing" provided for in the regulations of the Federal Home Loan Bank administration is entirely a creature of the administration itself, since it is not provided for in the statute, or in any portion of the Act, nor can the foundation for the same be found in any derivation of terms. Although the time within which this brief must be prepared and submitted is insufficient to allow a detailed reading and analysis of the cases cited by the appellants, those cases which have been read appear to be entirely aside from the point which they are cited to support and that they have been cited for the sole purpose of plucking isolated bits of language therefrom which it is believed may apply to the instant problems. A careful reading of these cases definitely

shows that either the case itself is entirely aside from the issues here presented or if the issues are similar that they show a differentiation which the appellants have failed to make. The whole point of this portion of the argument seems to be that it is necessary to exhaust the administrative remedy purportedly set up by the regulations, even though there is no constitutional or statutory foundation for the adoption of such regulation, and that the same is a figment and creature of the administration adopted in the forlorn hope that their lack of statutory or constitutional foundation may elude the scrutiny of a court before which they may be challenged. The cases cited in support of this theorem are not in point as is indicated from the following brief résumé thereof. The first of these is the case of:

Myers v. Bethlehem Steel Corp., 303 U. S. 41.

This was an action attacking the provisions of the National Labor Relations Act wherein the Court held that it was necessary that the appellants submit to an administrative hearing prior to resort to the courts. However a reading of the case definitely establishes that the Act there in question, in itself, provided for such hearing and for a judicial review thereof. As was stated at page 49:

> "The Act establishes statutes to which the Board (NLRB) must conform. There must be a complaint, notice and hearing. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive but only if supported by evidence. The order of the Board is subject to review by the Court (Circuit Court of Appeals) and only when sustained by the Court may the order be enforced." (Interpolations added.)

Thus, it is seen from the foregoing quotation how far afield is the cited case from the case at bar since the hearing provided for in the cited case was required by the Act itself, which also provided for a judicial review.

The next case cited is that of:

Macauley v. Watermay Steamship Corp., 327 U. S. 540.

This was a case under the Renegotiation Act. That Act required a hearing before the Chairman of the Maritime Commission and provided for a review by the Tax Court. The Act there under consideration definitely set up the standards to be followed and provided for a judicial review. It is interesting to note from the report that this case was argued by one of the counsel for appellants herein, *i. e.*, Robert L. Stern, Esquire, who certainly should have noted the distinctions between the acts under consideration.

The next case referred to is that of:

Goldsmith v. U. S. Board of Tax Appeals, 270 U. S. 117.

This was an action in mandamus to compel the admission to practice of the applicant before the Board of Tax Appeals. The petitioner filed his application with the Board and opposition was filed thereto but before the matters could be heard the mandamus proceeding was commenced. It is true that in that case the last Chief Justice Taft did state that it was necessary that the petitioner exhaust his administrative remedy, to wit: the hearing by the

board with which his application had been filed and that therefore, the mandamus proceeding was premature. However, as the appellants have failed to point out, a denial of the application would have been subject to review in an appeal therefrom.

Another case cited by the appellants is the very late case of:

United States v. Ruzicke, No. 54, this term, reported in 327 U. S. 776,

the opinion having been written by Mr. Justice Frankfurter. This case was one wherein an attack was made on the constitutionality of the Agricultural Marketing Agreement Act. The attack was made in a judicial proceeding which was commenced prior to the submission of the matters to an administrative hearing. Here again, as in all of the cited cases, the Act itself provided for a hearing and a review by the Federal District Court.

The other very late case relied upon by the appellants is that of:

American Power and Light Company v. Securities and Exchange Commission and Companion Cases, this term, Nos. 4 and 5, reported in 325 U. S. 846 and 91 L. Ed. Adv., page 89.

This case is cited in support of the contention (appellants' brief p. 31) that it is not material that the administrative hearing is provided by regulation rather than by statute. An examination of the statute there under consideration discloses that the provision for hearing and

notice thereof is in the Act itself. (*North American Co. v. Securities and Exchange Comm.*, 90 L. Ed. Adv. 737 at 742, n. 7), and the Court concludes, page 100 (L. Ed. Adv.) "that the Commission is bound under the statute to give notice and an opportunity for hearing to consumers, investors and other persons whenever constitutionally necessary," citing cases. It is further noted that, "the Commission in this instance actually gave all security holders of American and Electric public notice of the pendency of the Section 11 (b) (2) proceedings and invited them to file applications for intervention before a stated time." This, the Court said, was done pursuant to the requirements of the Act (p. 100) and, because of this, court Court further stated (p. 100), "These security holders thus received everything the Constitution could possibly guarantee them in this respect." From the above it is clear that the Court had in mind the necessity for protecting the security holder's rights but found in the Securities and Exchange Act a number of safeguards which are absent here.

From all of the foregoing, it is seen that in all circumstances wherein a compliance with a regulation providing for a hearing before a quasi-judicial body is considered a condition precedent to a judicial appeal that the regulations providing for such hearing have been set up in the Acts themselves which have provided for due and adequate notices and have insured the impartiality of such hearings by a review by a regularly constituted Court. Let

this be contrasted with the instant case, wherein the appellant Fahey would have held such a hearing before one of his own agents and would have himself passed upon the fairness of his actions in appointing a conservator without any provision for review by any judicial body. [R. 96.] (Federal Home Loan Bank Administration Order No. 5309). This order is almost as much a violation of constitutional rights as was the appellant Fahey's "Bulletin 54" issued March 25, 1946 [R. 361-363], wherein he forbade any of his subordinates to produce any records, for any court whether in response to a subpoena duces tecum or otherwise, *supra*.

Not only was the submission to such a mockery of a hearing not required as a condition precedent for an application for judicial relief but such hearing itself would have been an attempted usurpation of the judicial powers of the Federal Court in that the appellant Fahey and his subordinates would have been attempting to determine the same facts as had already been submitted to the Federal District Court some several days before the issuance of his order. That fact was and is the right of any administrative officer to determine the factual correctness and legality of his own acts. Insofar as this appellee is concerned such a hearing could only have further beclouded the titles to the real property which it held in trust for the more than eight thousand (8000) borrowers from the Association.

B.

APPELLANTS' POINT I(B).

Point I(B), that of estoppel, can in no wise be deemed to apply to this appellee although it is not conceded that the doctrine applies to any of them. Even though a majority directorate of the Title Service Company may have been the same as that of the Association, Title Service Company is a corporate entity established under the law of the State of California and is as much separate and apart from the Association as would have been any other trustee, whether individual or corporate. The appellant Fahey most certainly should have been familiar with the fact that the omnipotent power with which he has deemed himself to be clothed by virtue of Section 5 of the Home Owners' Loan Act is restricted in an attack upon a corporation organized under the law of a sovereign State, as the decision in the case of *Hopkins Federal Savings and Loan Association v. Cleary*, 296 U. S. 315, so aptly demonstrates, in holding Section 5(i) of the Home Owners' Loan Act to be unconstitutional as an invasion of State's rights.

If, for the purpose of argument, the trustee had been an entire stranger to the association, could it be said that he should have stood idly by and honored the requests for reconveyances presented to him by a party who was not named in the deeds of trust and by whom no notice of any kind of his authority had been served upon the trustee? This is even more remarkably so when such claimant of such right has not been appointed by any judicial body, or elected by the members of the Association.

C.

APPELLANTS' POINT I(C).

The next point raised, Subdivision I(C) is that the District Court lacked jurisdiction over the appellant Fahey. In support of that claim it is sought to show that the act is not a local one to come within the provisions of Section 57, Judicial Code, 28 U. S. C. 118 and as stated on page 48 of the appellants brief:

> "Obviously the section is confined to suits and are local in the sense of relating directly to specific property, real or personal, within the district of suit, or partly therein and partly in another district of the same state."

Can it be said, under any stretch of the imagination, that the titles to 8000 parcels of real property bearing encumbrances of an aggregate value in excess of $1,000,000.00, located exclusively in and near Los Angeles County, California, is not local?

It is further stated at page 50:

> "There has, therefore, been no change in title, ownership, or possession of property. There has been no more than a change in the trusteeship, in management; in brief, only a change of personnel for those acting for the association."

Can it be said that it matters not to the investors in the association or to the borrowers from the Association (R. 164-165), all of whom are members of the association, that the forcible removal of their own elected representatives and their replacement with absolute strangers has no effect? One might as well suggest that the forcible ouster of the elected Congress would have no effect on the people of the United States.

Even if this Court should hold that the jurisdiction of the District Court was not absolute under the provisions of Section 57 of the Judicial Code, the filing of its equitable defense in interpleader and the bill in the nature of interpleader by this appellee, Title Service Company, and the bill in the nature of interpleader by the appellee Wallis, under the provisions of the Federal Interpleader Act, Judicial Code, Section 24 (26), 28 U. S. C. 41 (26), confers absolute and unconditional jurisdiction on the trial court which requires the adjudication of the same question raised in the principal action. A feeble attempt has been made to show that this appellee could not have taken advantage of that Section and, as stated above, the argument is apparently deliberately restricted to the deposit of 174 promissory notes and deeds of trust in the Registry of the Trial Court with a total disregard and failure to mention the other deeds of trust, approximately 8000 in number, which were brought before the court by the bill in nature of interpleader by this appellee. As set forth in the paramount case in the field of interpleader as an equitable defense of:

Railway Express Company v. Jones (supra),

all of the necessary elements to an interpleader are here present including diversity of citizenship as between the association a resident of California, and the appellants Fahey and Ammann, residents of Massachusetts and Maryland respectively; property of a value in excess of $500.00, *i. e.*, $12,0000,000.00; and divergent and conflicting claims to the possession, management and control of that property. Therefore, whether or not any jurisdiction whatsoever attaches under the complaint herein, jurisdiction in interpleader, in and of itself, is sufficient to require

determination of the respective rights, which determination was made in the trial court.

As to the indispensability of the appellant Fahey, it is believed that the same has heretofore been adequately covered above in the citation and digesting of the cases of:

Colorado v. Toll, 268 U. S. 228;

Jarvis (Postmaster) v. Schachelton Inhaler Co., 136 F. (2d) 116 and other cases there cited.

D.

APPELLANTS' POINT II.

The next major point (II) is the claim that Section 5(d) of the Home Owners' Loan Act is constitutional. It is believed that this point has been quite thoroughly covered above but it is most interesting, in passing, to note the extremes to which the appellants have gone in attempting to read into the act sufficient statements by which the necessary constitutional safeguards or criteria might be read into the act. The meaning and connotation of the words "conservator" and "receiver" have been carried to their extreme. In fact, the two words are synonymous as applied in current legislation and almost universally connote a judicial background for the appointment of such a person and thereby include a constitutional basis for the appointment and judicial supervision of the acts of such officer. There is one statement made by the appellants, page 67 of their brief, wherein this appellee most heartily concurs wherein they state:

> "If Section 5(d) had merely authorized the bank administration to apply to a court of competent jurisdiction for the appointment of a receiver or conservator, we have no doubt that neither appellees nor the

District Court would have seen any constitutional objection. No claim of unlawful delegation of legislative power would have been made."

On pages 69 to 71, inclusive, the appellants list 8 grounds for the taking over of an institution. The grounds listed (a) through (h), inclusive, excepting (d), have no application in this case. They are insolvency, impairment of capital, violation of charter, suspension of payments, neglect to comply with an order of a supervisory official, refusal to submit to examination, and refusal of an officer of the institution to be examined under oath regarding its affairs. The only one which has been sought to be applied in the instant case is (d) which contains a list of conclusions of law almost identical with those contained in Federal Home Loan Bank Administration Order No. 5254 under which the appellant Ammann asserted the right to seize the Long Beach Federal Savings and Loan Association. [R. 300-301.] Such order was made with no notice, hearing, or charges being preferred, even as were Federal Home Loan Bank Administration, Orders Nos. 5082, 5083 and 5084 [R. 293-295, incl.] under which the Federal Home Loan Bank of Los Angeles was liquidated, merged with the Federal Home Loan Bank of Portland and the combined bank transferred to the newly established Federal Home Loan Bank of San Francisco and the 12th Federal Home Loan Bank District abolished and consolidated with the 11th Federal Home Loan Bank District. It is not possible for this appellee to see how the other subsections of Section 5 of the Home Owners Loan Act can give any indices or criteria under which the Federal Home Loan Bank Board might have properly acted in establishing their rules and regulations, provided for in Section (d).

E.

Appellants' Point IV.

Section IV of the appellants' brief is the only one which apparently specifically deals with this appellee. As noted above it is entirely immaterial whether or not the officers or directors of the Title Service Company may have been parallel with those of the Long Beach Federal Savings and Loan Association. Title Service Company ,a separate entity and a corporation established under the State laws of the State of California has no interest in, nor is it subject to any of the purported rules or regulations of the Federal Home Loan Bank Administration, nor to any of the provisions of the Home Owners' Loan Act. It is to be noted that appellants have assidously refrained from mentioning the bill in the nature of ,interpleader filed by this appellee which had as its subject matter the approximately 8000 deeds of trust wherein legal title to as many parcels of real property was vested in Title Service Company as trustee. An obviously false and misleading statement appears on page 96 of the appellants' brief wherein it is stated:

> "The only basis claimed for interpleader, is Title Service Company was in doubt whether it should reconvey the property at the request of the conservator, the legality of whose status was not clear. This asserted difficulty was easily obviated in the court below, by duplicate instructions to Title Service Company from the conservator and the former management."

The fact is that the Home Investment Company of Long Beach necessarily had to present a proceeding in intervention to accomplish this end. Although the reference made to the documents on file in the court below indicate that one

set of requests for reconveyance was made by the association without having been ordered so to do, that a reference to the transcript of testimony discloses quite the opposite. In the course of the hearing the Court stated [R. 589]:

> "At my suggestion the request for reconveyance of the Association has been prepared."

And again [R. 592]:

> "Mr. Walker: I suppose, Your Honor, that the statement I wish to make is in the nature of an objection, and I should perhaps preface it by saying that I personally feel that the petitioner in intervention here is entitled to relief. The objections are two-fold: In the first place—
>
> The Court: Instead of calling them objections, why not call them expression of your reason for lack of consent?
>
> Mr. Walker: Will the reporter include that at the beginning of my remarks then.
>
> We have interposed objections by way of motion to dismiss to the interpleader suit itself. One reason for my inability to consent is that it might be putting my client in the position of recogniz[illegible] the validity and submitting to the jurisdiction of the Court. That I cannot do."

And again when the Court spoke [R. 596]:

> "There should also be a reservation in the order that by the order no adjudication is made or attempted to be made of any of the issues raised by the complaints in intervention or the motions of the appearing defendants, nor are they to be prejudiced by the issuances of such order. Otherwise I do not think I would have any objection to such other form of order as the parties may agree upon."

The lack of voluntary deposit of such requests is further indicated by the order made in the nature of the intervention of O'Rourke [R. 513]:

> "* * * That the Long Beach Federal Savings and Loan Association shall deliver to the Clerk of Registry of this Court its request for reconveyance; * * *."

Thus it is seen that there were, in fact, no voluntary deposits of duplicate requests for reconveyance. All of the requests made by the Association, were made by reason of the persuasion or order of the Trial Court and the counsel for the Association made it abundantly clear to the Court that the Association did not recognize the authority of the appellant Ammann to execute requests for reconveyances, nor to accept payments upon the notes or deeds of trust and that it, the Association, therefore could not voluntarily execute such requests pursuant to the demand of the appellant Ammann, and that the appellant Ammann did object to such proceedings. In truth and in fact Title Service Company, on behalf of its many trustors, and with counsel for the plaintiffs and for the Association, did solicit a stipulation from the appellants which would allow the clearance of the titles to real property by the means suggested by the appellants in their brief, which stipulation was declined by the appellants upon the ground that to do so would be tantamount to recognizing the authority of the District Court which they declined to do. The effect of this lack of cooperation has been to limit the number of persons who were able to clear their titles by the intervention method to those who could afford the expense of private counsel for such interventions and has placed it beyond the reach of all

of those whose modest means did not allow them to incur the expense to clear the titles to property which had been beclouded through no fault of their own. This includes many ex-service personnel who are unable to avail themselves of privileges of the "G. I. Bill of Rights" and who have been deprived of the enjoyment of their own property for which right they expended from two to five years of their life to protect their homes, too late to find that the same had been usurped by an arm of the government which they had fought so well to defend. How true this is can only be known to those who have been so disillusioned, including counsel for this appellee. It is most unfortunate that one in whom the trust of the government has been reposed, the appellant Fahey, has seen fit to so abuse his position as to try to place himself above and beyond the constitutional control of the Courts.

Although the criticism directed at the appellee Wallis on page 98 of the appellants brief, is not, by its terms, directed at this appellee, it might be claimed to apply, in that the interpleader does not exhibit the disinterestedness normally required by an interpleading party. This contention is adequately disposed of by numerous cases holding that such a person, though not totally disinterested, may still avail himself of the interpleader statute.

Hunter v. Federal Life Insurance Company, supra.

By footnotes on the same page it is pointed out that there is no diversity of citizenship between the interpleader and the Association. This contention is adequately disposed of by the interpleader Section itself wherein it is provided and made sufficient if one of the adverse

claimants is a non-resident of the district. It is likewise disposed of in the case of:

Treines v. Sunshine Mining Co., 308 U. S. 66, *supra*.

In view of the fact that both of the appellants are non-residents of California, *i. e.*, Fahey a resident of Massachusetts and Ammann a resident of Maryland, the diversity is sufficient and complete.

It has been urged throughout the appellants' brief and it is included in the prayer thereof that the action be dismissed. Should this Court, for any reason, be of the opinion that a dismissal is warranted, the question must necessarily follow as to what disposition would be made of the interplead property. Since the trustee itself physically deposited documents which were evidence of title and which were securities, and which securities have since been transmuted into cash in the approximate amount of $900,000.00 now held on deposit in the Registry of the Trial Court, to whom would it be returned? The answer appears to be obvious that it would necessarily be returned to the trustee, this appellee. Likewise, the question is asked, what would be the affect of a dismissal on the titles to approximately 8000 home owners? This appellee did not dare to reconvey upon the request of the appellant Ammann and, even should this action be dismissed, it still could not so act. In such cases how could the home owners whose titles are involved clear their titles? Would it mean 8000 separate quiet-title actions? If so, in what court? If the contention of the appellants be followed that the appellants are subject to suit only in the District of Columbia would it be successfully contended that each

of these 8000 individuals would have to take their litigation to the District of Columbia—3000 miles from the situs of their property? Here again the answer appears to be obvious. Their only remedy is by intervention in the pending litigation in the District Court wherein their property is located, their only protection is in the District Court whose jurisdiction must be sustained by this Court, if irreparable loss and great confusion are to be avoided. The only other possible remedy of the Home Owners would be an action in the State Courts which would unquestionably have jurisdiction *in rem* over the titles to the real property. The State Court would then have to determine the same constitutional question now before the Court and take the long road through the District Court of Appeals and Supreme Court of the State of California, and finally back to this Court, a generation or so later with the same question.

Throughout the litigation, and in the pending appeal, the appellants have claimed on numerous occasions that there has been no change in the title, ownership, or possession of the property involved and that they, rather than the original directors and officers, are the operating and managing heads of the Association. If this is the case, this appellee cannot forego asking one further question. The deeds of trust all contain a provision for the substitution of a trustee by the beneficiary. That provision is as follows: "The Trustee named herein, or any successor or successors to any such trustee may, from time to time,

be substituted by the recording, in the County in which the property herein described is located, of a substitution executed and acknowledged by beneficiary hereunder, or beneficiary's successors in interest." [R. 407.] Why, if the ground upon which the appellants rest their authorization is so solid, have they not exercised this right of substitution? If their position is well taken to the effect that the lack of cooperation by this trustee is the only stumbling block in the way of clearing of titles, certainly the substitution of a "disinterested" trustee would long since have solved this difficulty. The answer again must be obvious in that the conflict of the claim of right to manage the affairs of the Association, as the beneficiary under all of these deeds of trust, by the appellant Ammann, with the rightful interest of the officers and directors of the Association, is insufficient to vest a marketable title to any real property reconveyed upon the basis of a request for reconveyance executed by such appellant. Although the appellants claim that the identical management of the Association and this appellee is unfit and too dangerous to run the Association, and that by reason thereof they seized the Association, that same management is apparently satisfactory as trustee, no substitution of trustee having been made.

F.

Effect of Dismissal.

One further question presents itself as a necessary result to a dismissal of this action. That question is what results would follow a merger of the Association with any other Association? Although the appellants have claimed to act with the utmost of good faith and have disclaimed any proposal of merger as feared by the plaintiffs, in view of the summary destruction of the Federal Home Loan Bank of Los Angeles and the merging of its assets with those of the Federal Home Loan Bank of Portland with the simultaneous destruction and merger of both banks with a newly established Federal Home Loan Bank of San Francisco, it is hard to believe that such similar fate would not befall the Long Beach Federal Savings and Loan Association without the interposition of the protecting equitable arm of the Federal judicial systems. Should such merger take place, the obligation of the trustors' and borrower members of the Association, which aggregate almost one-half of the assets of the Association, would be transferred and assigned to an absolutely strange institution within or without the territory adjacent to the area in which their homes are located and it is even conceivable that the same might be transferred without the State of California. In negotiating these loans such borrower members did so upon the confidence which they had in the management of the Association and it might not be too much to anticipate that they might find themselves ultimately indebted to an institution any place within the continental limits of the United States—Hawaii, Alaska or Puerto Rico; that is to say, any place wherein the Federal Home Loan Bank Administration has been authorized to operate. In such case, how then could they clear the titles to their homes?

Conclusion.

In view of the foregoing, it is respectfully submitted:

1. *That* the Trial Court had jurisdiction of the subject matter, and had jurisdiction of the parties;

2. *That* the appellant Fahey is not an indispensable party;

3. *That* the Court had jurisdiction to hear and to determine the matters before it;

4. *That* Section 5(d) of the Home Owners' Loan Act of 1933, as amended, is unconstitutional, being in violation of the 5th and 14th Amendments of the Constitution of the United States and in violation of Article I, Section 1, and Article I, Section 8, clause 18, of the Constitution of the United States;

5. *That* having found said section to be the basis for the adoption of the regulation under which the appellants Fahey and Ammann presumed to act was unconstitutional, it necessarily follows that they are without power and that the court below had no alternative other than to make the judgment which it did; and

6. *That* no good could have followed, but that unwarranted, damaging and irreparably injurious delay and multiple and vexatious litigation could only have followed the limitation of judgment to an interlocutory injunction, and that this Court should affirm the judgment of the Court below in its entirety.

Respectfully submitted.

HARRY O. WALLACE,

Attorney for Appellee, Title Service Company.

IN THE

Supreme Court of the United States

October Term, 1946

No. 687.

JOHN H. FAHEY AND A. V. AMMANN, INDIVIDUALLY AND RESPECTIVELY AS FEDERAL HOME LOAN BANK COMMISSIONER AND CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,

Appellants,

vs.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, *et al.*

Appellees.

Upon Appeal from the District Court of the United States for the Southern District of California.

BRIEF OF APPELLEE ROBERT H. WALLIS.

ROBERT H. WALLIS,
[illegible] East Fourth Street, Long Beach 2, California,

Appellee.

[illegible] Law Printing, Los Angeles. Phone PR 5206

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Appellants,

vs.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, *et al.*,

Appellees.

BRIEF OF APPELLEE ROBERT H. WALLIS.

Preliminary Statement.

The defendant and cross-claimant in interpleader, Robert H. Wallis, because of a shortage of time, will restrict himself to matters which peculiarly affect him or in which he has taken an especial interest.

This appellee does not wish his omission of argument to be taken as an admission of the soundness of any of the arguments made by the appellants in their brief.

Factual Statement.

The Board of Directors of the Long Beach Federal Savings and Loan Association, hereinafter called the "Association" were entirely familiar with the history of the seizure by the appellants Fahey and Ammann of the Federal Home Loan Bank of Los Angeles, the merger of that solvent and prosperous $43,000,000.00 bank with the infinitely smaller, $9,000,000.00, Federal Home Loan Bank of Portland, and the transfer of the combined banks to San Francisco, under the new name of Federal Home Loan Bank of San Francisco. All of these changes had taken place on one day—March 29, 1946. They were accomplished by the issuance by the appellant Fahey, as Federal Home Loan Bank Commissioner, of three orders simultaneously. [R. 208, 293, 295]. The Association was a member of the Los Angeles Bank and its president, T. A. Gregory was a member of the Board of Directors of the Los Angeles Bank. The Association was a member of the Los Angeles Bank and had $381,000.00 [R. 287] invested in the stock of the Los Angeles Bank. All of the disaster which befell the Los Angeles Bank came upon it without warning, notice, charges, hearings or provocations, other than the refusal of its Board of Directors, including Mr. Gregory to submit to the dictation of the appellant Fahey in the election of a successor to its recently deceased president [R. 122, 287].

In order to anticipate any expected reprisal or retaliation from the appellants the directors of the Association adopted the resolution appropriating the sum of $100,-

000.00 for attorney fees, which resolution is self explanatory and is set out in full below [R. 110-111]:

> "Whereas, there have been indications that retaliation against this association by those purporting to be representing the Federal supervising authorities, because the representative of this association duly elected as director of the Federal Home Loan Bank of Los Angeles did not disregard the legal rights and best interests of said bank and submit to the dictation of the Federal Home Loan Bank Commissioner, and
>
> "Whereas, such retaliations are unwarranted and violate the principles of our democratic government and are detrimental to the best interests of this association,
>
> "Now, Therefore, be it hereby resolved that the officers of this association be and they are hereby authorized to employ legal counsel to conduct appropriate legal proceedings to restrain said Federal Home Loan Bank Commissioner or his deputies from interfering with the normal and proper conduct of this association's affairs.
>
> "The sum of one hundred thousand dollars ($100,000.00) is hereby appropriated and authorized to be expended for that purpose."

That said expected retaliation was properly anticipated was borne out by the subsequent events and it was only some fifty-two days after the seizure and confiscation of the Federal Home Loan Bank of Los Angeles that the deluge descended on the Association. On May 20, 1940, without prior or any warning, or any legal evidence of his authority, the appellant Ammann appeared at the office of the Association just before business hours, and

summarily confiscated the Association with the publicly announced intention of starting a "run" on the Association and thereby tearing it down [R. 72, 73, 121].

suant to said resolution, there was given to this appellee as general counsel for the Association, a check in the sum of fifty thousand dollars ($50,000.00) to be used by this appellee as such general counsel, in resisting the appellants anticipated unlawful actions [R. 58].

This fifty thousand dollars ($50,000.00) check was the only payment made under the authority of the resolution appropriating the hundred thousand dollars. It was not cashed, but following service of the complaint on this appellee as a defendant, it was deposited in court June 12, 1946, concurrently with the filing of this appellee's answer and cross-claim in interpleader. [R. 54, 58, 218].

The above described protective measure on the part of the Board of Directors was seized upon by the appellants as their principal excuse for the seizure of the assets of the association [R. 90]. In this connection, it is to be noted that the original order for seizure, dated May 20, 1946 [R. 85 and 86] contained no factual reason whatever for the seizure of the Association. It merely recited that some unknown persons had arrived at certain conclusions of law, which in the minds of those unknown persons had led to the further conclusion that a conservator should be appointed. The association asked for a more definite statement of cause for the appointment of a conservator [R. 86-87] and in reply [R. 88-90] the

barrel was scraped for an excuse for the seizure. This was a difficult thing to do because the Association was admittedly solvent [R. 120], had grown under the same management in twelve (12) years from a humble beginning with assets of approximately seven thousand five hundred dollars ($7,500.00) to assets in excess of twenty-six millions dollars ($26,000,000.00) [R. 120 and 121], and this same management had built up profits, undivided surplus and reserves in excess of one million three hundred thousand dollars ($1,300,000.00) [R. 120-121], while continually paying dividends of two and one-half percent (2½%) to four percent (4%) per annum [R. 284].

The $26,000,000.00 assets of the Association when seized consisted of cash, negotiable securities, bearer and registered bonds, and notes secured by Trust Deeds upon southern California real estate having unpaid balances aggregating more than twelve million dollars ($12,000,000.00) and other real and personal property. All of these assets were physically located in southern California—necessarily making this an action *in rem* and strictly local in character.

Therefore the above described attempt on the part of the directors to defend the Association, its assets and surplus and profits, afforded the only appropriation of any sizeable amount which could conceivably be grasped as an excuse for this unwarranted seizure [R. 90]. Mr. Harold Lee, Deputy Home Loan Bank Commissioner, and as such appellant Fahey's spokesman, in testifying before

a Congressional Committee investigating the Federal Home Loan Bank Administration stated that his office recognized that there was nothing improper in the board of directors authorizing action to be taken to restrain the appellant Fahey and his deputies from interfering with the normal and proper conduct of the association's affairs [R. 111]. Mr. Lee explained that his objection was to the size of the defense appropriation, rather than to its purpose [R. 111].

> "Now I do want to make clear that we never have questioned and never would question the withdrawal of a fair and reasonable amount, to *challenge the authority of the Federal Home Loan Bank Administration. It has been done time and again and can always be done*, but to spend hundreds of thousands out of these mutual institutions out there in this thing, we thought, is going too far." (Emphasis added.)

Because it is known to this appellee that the appellants had expressed the view that the defense fund had been wrongfully given to him, and because of the service upon him of the plaintiffs' complaint herein, claiming the appellant's seizure to be unlawful; this appellee did what he considered to be the honorable, proper and ethical thing for a man in his position to do. He deposited the fifty thousand dollars ($50,000.00) check in the custody of the clerk of the district court [R. 218] with his cross-claim in the nature of interpleader and prayed that the court instruct and order him as to his rights and duties in

respect to the same and the funds represented thereby [R. 62].

In this connection the Court is advised that on the 7th day of April, 1947, after the filing of points and authorities, affidavits and extensive oral arguments on the part of counsel for the plaintiffs and other counsel of record, resisted, however, only by counsel for the appellants herein, the District Court granted plaintifts' motion and ordered the payment to counsel for plaintiffs of the sum of fifty thousand dollars ($50,000.00) as an interim allowance on account of attorneys' fees for services rendered prior to March 1, 1947, and in addition also ordered reimbursement to plaintiffs and their counsel of expenses incurred prior to March 1, 1947 in the sum of seventeen thousand two hundred ninety-five and 13/100 dollars ($17,295.13), *i. e.*, a total partial allowance on account, of sixty-seven thousand, two hundred ninety-five and 13/100 dollars ($67,295.13). It is submitted that this judicial recognition of the seriousness of the association's jeopardy in part, as it was based upon the expert opinions of such eminent counsel as former Justice John W. Preston of the California Supreme Court and L. M. Martineau, Jr., Esquire, in itself constitutes a complete refutation of Mr. Lee's objection to the size of the above described appropriation and destroys the principal ground claimed by the appellants as the reason for their otherwise unjustified seizure.

The appellants here, A. V. Ammann and John H. Fahey, were named cross-defendants in this appellee's cross claim

in interpleader [R. 54], summons was issued [R. 63], service was made both by mail [R. 63, 64 and 65] and by personal service in the District of Columbia by a deputy United States marshal [R. 65 and 66].

The appellant Ammann made a motion to dismiss this appellee's answer and cross-claim in interpleader, which was denied, and which is now urged as an error of the District Court in Specification No. 7 (A. B. 16*).

Specification No. 9 (A. B. 17) is a claim that the Court erred in holding that it had jurisdiction of the appellant Fahey.

Specification No. 11 (A. B. 17) contends that the lower court erred in failing to dismiss the cross-claim "because appellees have not exhausted their administrative remedies."

In this appellee's position on this appeal, particular attention will be paid to the argument supporting these specifications of error.

From the facts of the story as disclosed by the pleadings, affidavits and other documentary evidence, denied only as to intent, is developed the underlying fact that this litigation is based on but one issue, to-wit: the determination of the appellant Fahey to ruin any who might *dare* to oppose his despotic rule of the savings and loan industry in the United States.

*A. B. refers to appellant's brief.

ARGUMENT.

I.

Did the District Court Have Jurisdiction Over Appellant John H. Fahey?

Appellants argue "No" (A. B. 46 to 53).

A. The Plaintiffs' Action Is Properly Brought Under Title 28, Section 118, U. S. C.

Appellants argue (A. B. 46) the plaintiffs action was brought under 28 U. S. C. 112; when obviously it was brought under 28 U. S. C. 118.

Section 118 contains a recitation of its own jurisdictional requirements which have been met by the plaintiffs' complaint. It is to be noted:

(a) There are claims to and clouds on the title [R. 302] to some eight thousand (8,000) parcels of real [R. 37] and personal property admittedly located in the district in which the action is brought (A. B. 49), as a result of the unlawful and unwarranted actions of the appellants Fahey and Ammann.

(b) One or more of the defendants are not inhabitants of or found within said district. (Affs. Ray E. Dougherty [R. 261] and Robert H. Wallis [R. 304] and return of service of United States Marshal filed [R. 46] herein.)

(c) The plaintiffs are trying to remove the claims to and clouds on the title to the real and personal property above described, all of which is located in the Southern District of California.

(d) The court has made an order requiring the absent defendants to appear [R. 43] and pursuant to said order the defendant and appellant Fahey has been served and

has appeared [R. 200], although claiming to appear specially, in this case.

(c) The person in possession or in charge of the property to-wit, the appellant Ammann has been served [R. 19].

B. The Appellants Have Improperly Cited Section 112 of Title 28 U. S. C.

Apparently, counsel for the appellants overlooked the fact that Section 112 expressly makes an exception to actions brought under certain sections of the Code, including Section 118. The entire argument raised by these defendants based on the erroneous assumption that Section 112 is applicable here becomes irrelevant and immaterial when this exception is observed.

C. A Severing of the Initial Action and the Cross Actions in Interpleader Filed by the Defendants Title Service Company and Robert H. Wallis Would Result in a Separate Determination in Each of the Three Actions and Cross-Actions Upon Many of the Same Issues.

In such an event the findings and conclusions of the Courts in the various actions might be in conflict and might require appeals for clarification and would entail hardship and unnecessary expense on all parties. The only advantage apparent in such result to the appellants would be the wearing down of the plaintiffs and cross-complainants in interpleader, appellees here, through hardship, harassment and expense.

If it should be necessary to recommence this action and/or the cross-actions in the District of Columbia following dismissal here, the parties, residents of California, where the property is located, would be forced to assume

the arduous effort and almost impossible expense of asserting their rights in the jurisdiction of the District of Columbia, some 3000 miles away, all because one defendant had an official residence in that district. The unfairness of such a situation is discussed by the Supreme Court in the case of:

First National Bank of Canton v. Williams, 252 U. S. 504.

In this case the plaintiff, a national bank, brought suit in the District Court in the State of Pennsylvania to enjoin the Comptroller of the Currency from doing certain things under color of his office, declared to be threatening, unlawful, arbitrary and oppressive. The Comptroller was in Washington, D. C., and a subpoena was served on him there by the United States Marshal. He challenged the jurisdiction of the District Court and there prevailed. However, this Court held the District Court had jurisdiction and reversed the District Court.

Other cases giving a liberal construction to Section 118 on the point of jurisdiction are:

Dick v. Foracker, 155 U. S. 404;

McBrunney v. Carson, 99 U. S. 567, 549;

Spellman v. Sullivan, 43 F. (2d) 762, affirmed 61 F. (2d) 787;

Bede Steam Shipping Co. v. New York Trust Co., 54 F. (2d) 658, 662;

Fischer v. American Life Ins. Co., 314 U. S. 549.

Metropolitan Life Insurance Co. v. Skov, 45 F. Supp. the District Court in Oregon held that the power to serve process in other district will be implied, where not speci-

ally conferred, if the nature of the cause under this section so authorizes, service may be had anywhere in the United States and only one defendant need reside in the district.

The courts have generally given a liberal interpretation to Section 118.

Port Angeles Western R. Co. v. Callam County, Wash., 20 F. (2d) 202, which, it should be noted, was a decision by a three judge statutory court.

To the same general effect see *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 1.

Inasmuch as this is the only court in which complete relief may be afforded, it is submitted that the action should not be dismissed against the appellant Fahey over whom jurisdiction had been obtained in this action by order of the court duly made and carried out.

D. Wallis' Interpleader Cross-Claim Brought Under Title 28, Sec. 41 (26), Rule 22 F. R. C. P. and General Equity Powers of Court Establishes the Jurisdiction of the District Court Independently of the Plaintiffs' Action.

Insofar as the cross action in interpleader commenced by this appellee is concerned, that cross action was brought under Title 28 U. S. C. 41 (26), Rule 22 Federal Rules of Civil Procedure and the long established equity powers of the United States District Courts; and jurisdiction having been acquired under these authorities, the District Court thereby became possessed of all of the powers conferred upon district courts to hear and determine the case and to issue injunctions and to enter all such other orders and decrees as might be necessary or convenient to carry out and enforce its jurisdiction.

Subsection 26(c) of this section provides as follows:

> "(c) Notwithstanding any provisions of the Judicial Code to the contrary, said court shall have power to issue its process for all of such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine *and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.*" (Emphasis added.)

The leading case covering federal jurisdiction in proceedings in interpleader, and the one most nearly in point in the instant case is that of:

> *Railway Express Agency, Inc. v. Jones, et al.*, 106 F. (2d) 341,

decided by the Circuit Court of Appeals of the Seventh Circuit. The facts in that case are analogous to those in the case at bar in that a class suit was originally instituted by one Jones, who, with many other of diverse citizenship had been victims of a nationwide fraud, to-wit: the infamous Sir Francis Drake Estate solicitation. The proceeds of the fraud, in money, had been shipped by express and were actually in the hands of the appellant express company when the fraud was discovered and the action filed. Jones, on his own behalf, and for the other victims, all of whose individual losses had been less than $500.00, but which aggregated in excess of $24,000.00, commenced an action against the perpetrators of

the fraud and the express company. The appellant express company filed an affirmative defense by a bill in the nature of interpleader admitting the possession of the funds, admitting no interest therein, but alleging the adverse interests of the plaintiff and other members of the class represented by him on the one hand, and the claim of the Collector of Internal Revenue who had appeared in the action and asserted a claim and lien on the funds by reason of non-payment of income tax by the principal perpetrator of the fraud, on the other hand, the unpaid tax being far in excess of the money held. The motion of the express company to be allowed to interplead was, by the trial court, denied, and the express company appealed. The two points raised on appeal were: (1) the right of Jones, based on the pleadings, to maintain a class suit, and (2) whether or not the express agency was within its rights in filing a counter-claim setting forth a cause of action in the nature of interpleader. The Circuit Court of Appeals held that whether or not any of the individual claimants had claims within the statutory amount (over $500.00), the express company was entitled to file its equitable defense in interpleader and the court stated at page 344:

> "The Railway Express Co.'s right to file its interpleader is not established nor defeated by the merits of plaintiffs' claim . . .
>
> "Where the possessor of funds can establish the essential and jurisdictional facts prescribed in the statute, his right to relief under this section (41) (26) is absolute."

and at page 345:

> "By proceeding under the counter-claim of the railway express the jurisdiction of the court was not

assailable and the claims of all claimants may be litigated exacted the same as in a proper class suit.

"It therefore follows that as a matter of wise discretion, *as well as of recognizing a right which the railway express possessed absolutely.* The court should after the counter-claim was filed, have proceeded as provided for in the interpleader statute." (Emphasis added.)

The foregoing case is very well reasoned and appears to set at rest the question of jurisdiction in those cases anticipated by subdivision (c) of the interpleader statute, *supra*, of the rights to introduce an equitable defense in interpleader or by bill in the nature of interpleader. It likewise conclusively established the jurisdiction in the District Court to take and maintain jurisdiction of all other parties to the action regardless of whether or not the court would otherwise have had jurisdiction of them. This case is likewise authority for the bringing of a class action as was filed by the plaintiffs and appellees Mallonee, *et al.*

This appellee, Robert H. Wallis, physically deposited his $50,000.00 certified check in the Registry of the Court [R. 218].

Triones v. Sunshine Mining Co., 308 U. S. 66 at 70 in which this Court held that in such case, service may be had upon any claimant to the interplead property anywhere in the United States ~~and (pp. 71-72)~~ that only one defendant need reside in the district of suit.

See, also:

Metropolitan Life Insurance Co. v. Skov, 45 F. Supp. 140.

E. The Cross Claim in Interpleader of Robert H. Wallis Is Within the Provisions of Subdivision 26, Section 41, Title 28 U. S. C.

An analysis of the requirements of the section and the facts here demonstrates conclusively that said requirements are here met:

Requirements.	Facts.
(a) The bill must be verified.	It is:
(b) The interpleader must have in his custody or possession, money or property of the value of $500.00 or more.	He had property of a value of $50,000.00
(c) There must be two or more claimants.	There are four defendant claimants, to wit: The defendants John H. Fahey, A. V. Ammann, Robert H. Wallis and Long Beach Federal Savings and Loan Association. There are also the persons named in paragraph X of the Cross Claim in Interpleader of the defendant Wallis who will present claims against this fund. There will probably be other claimants. Some of the persons named in Paragraph X are not citizens of the State of California.
(d) Two claimants must be citizens of different states, and the suit	Long Beach Federal Savings and Loan Association is a resident of California;

must be brought in the district where one or more claimants reside.	Cross-Claimant is a resident of California; Cross-defendant Fahey is a citizen of Massachusetts (see affidavit of Ray E. Dougherty attached motion to dismiss or quash service of complaint herein [R. 261]. The residence and citizenship of the defendant Ammann is the State of Maryland [R. 304]. The Claimant Robert H. Wallis is a citizen of the State of California.
(c) There must be a deposit into the Registry of the Court.	This was done at the time the answer and cross-claim were filed.

It follows that all of the necessary jurisdictional requirements have been met by cross-claimant, Robert H. Wallis.

F. Defendants A. V. Ammann, John H. Fahey, and Long Beach Federal Savings and Loan Association Are Adverse Claimants to the $50,000.00.

Various defendants have made demands on this cross-claimant, and the cross-complainant is not charged with the knowledge, nor does he know what the defendants Fahey and Ammann would do with the money if they, or either of them, received it. All the interpleading party need know is that there are adverse claims made for the property interplead.

Such is the purpose of a proceeding in the nature of interpleader. To dismiss this cross-claim on the ground

of lack of adversity would require disregarding the allegations of the cross-claim and the uncontradicted affidavits filed herein [R. 54-62; 110].

G. Diversity of Citizenship.

It is submitted the amendment to Sec. 41(1) U. S. C. A. is the section fixing the general jurisdiction of the court and includes subdivision (26) of the same section within its scope.

H. Argument That Interpleader Is Not Available to This Appellee.

This cross-complainant "had a right to resort to the remedy of interpleader regardless of what other remedies were available," as said in the case *Hunter v. Federal Life Insurance Co.*, 111 F. (2d) 551, 556 (1940), the District Court having assumed jurisdiction, the Circuit Court of Appeals, Eighth Circuit, stated the District Court "has the power to grant full relief, including the allowance of a proper set-off against any particular claim growing out of any contract which entitled a claimant to pursue the fund."

See also:

American Surety Co. v. Calcasieu Oil Co., 3 F. Supp. 939, 941.

There can be no question but that the cashier's check interplead is property within the meaning of the act.

Omaha National Bank v. Federal Reserve Bank, 26 F. (2d) 884.

I. Adversity of Claimants.

The appellants have indicated by footnote (A. B. 98n46) that it is doubtful whether the interpleader statute applied where some of such adverse claimants are citizens of the same state. Apparently, in making this statement, the appellants have overlooked the fact that the appellant Fahey is a resident of Massachusetts [R. 260] and that the appellant Ammann is a resident of Maryland [R. 304]. This contention seems to be adequately disposed of by Subsection (b) of the interpleader statute, 28 U. S. C. 41(26), which provides as follows:

> "Such a suit may be brought in the district court of the district in which one or more of such claimants reside or resides."

This contention was likewise adequately disposed of in the case of *Treines v. Sunshine Mining Co.*, 308 U. S. 66. In that case, this Court stated at page 70 as follows:

> "As required by the Act, this case was begun by the claimant, a corporation of the State of Washington, impleading one group of claimants who are citizens of that same state, and another, the adverse group, who are citizens of Idaho. Under the interpleader act, this identity of citizenship is permissible, since diversity only between claimants is required."

Appellants have ignored the fact that this appellee and those to whom he has committed portions of said $50,000.00 are also claimants or probable claimants all adverse to the claims of appellants Fahey and Ammann. The claims of the defendants Fahey and Ammann are adverse to the claim of the Association and Wallis in that while both claim to act for the same principal, their asserted uses of the money and demands for possession are inconsistent and adverse.

J. The District Court Has General Equity Jurisdiction.

Texas v. Florida, 306 U. S. 398, discussed at length in annotations 121 A. L. R. 1200 *et seq.* and in 83 L. Ed. 794. In that case this Court stated:

> "When, by appropriate procedure, a court possessing equity powers is in such circumstances asked to prevent the loss which might otherwise result from the independent prosecution of rival but mutually exclusive claims, a justiciable issue is presented for adjudication which, because it is a recognized subject of the equity procedure which we have inherited from England, is a 'case' or 'controversy', within the meaning of the Constitutional provision:" (p. 407.)
>
> ". . . . the gist of the relief sought is the avoidance of the burden of unnecessary litigation or the risk of loss by the establishment of multiple liability when only a single obligation is owing. These risks are avoided by adjudication in a single litigation binding on the parties." (p. 412.)

To the same effect:

> *Harris v. Travelers Insurance*, 40 F. Supp. 154, 157.

The court in *Railway Express Agency, Inc. v. Jones*, 106 F. (2d) 341 held that having established "the essential and jurisdictional facts prescribed by the Statute, his right to relief under this section is absolute." (p. 344), and continued

> "By proceeding under the counter-claim of the Railway Express Company, the jurisdiction of the Court will be unassailable and the claims of all claimants may be litigated exactly the same, as in a proper class suit."

K. Even if the Original Action Should be Dismissed, the Interpleader Cross Actions Must Stand.

If counter-claims set up causes of action within the jurisdiction of the court as a court of equity they should not be dismissed, and on dismissal of the original action should be treated as original bills.

In no other district or court may complete relief be afforded. The District Court below has jurisdiction and the appellants have not disproved it.

Appellants contend that a dismissal of the complaints of the appellee shareholders and the appellee association would necessarily lead to the dismissal of the interplead cross-claims which are claimed to rest upon the main claims (A. B. 29). Which interplead cross-claims are supposed to rest upon the main claims is not divulged. If the cross-claim of Robert H. Wallis is intended to be included, this appellee takes sharp issue with the appellants unsubstantiated statement for this appellee's cross-claim in interpleader stands upon its own and should be treated as an original bill if the original action should be dismissed.

Vidal v. South American Securities Company, 276 F. 855 at 874.

It is to be further pointed out that no argument is advanced by the appellants in support of their contention that Section 118, Title 28, U. S. C. is not applicable to the pending action, and much less to the cross-claims in interpleader. The appellants themselves have conceded that the cross-claims in interpleader are properly brought in the district of suit when they make the following statement (A. B. 48):

"Obviously, the section is confined to suits which are local in the sense of relating directly to specific

> property, real or personal, within the district of suit or partly therein and partly in another district of the same state."

On page 49 of their brief the appellants further stated:

> "The property and asset of Long Beach, are admittedly within the territorial jurisdiction of the lower court."

Appellants then go on to argue that the crux of the relief sought is not against the property, but personal decrees against appellants Fahey and Ammann (A. B. 49). In making this argument appellants apparently overlooked the cross-claims in interpleader, for there the decrees sought are strictly against the property and not personal decrees against the appellants Fahey and Ammann.

In commenting on the service on the appellant Fahey of the cross-claims of the appellees Title Service Company and Robert H. Wallis, appellants have admitted (A. B. 53, note 24) that the interpleaders deposited their money into court "under Judicial Code, Section 24 (26), 28 U. S. C. 41(26)." Appellants then impliedly admitted that while such service might be valid for the purpose of determining the claims to the property deposited in the Registry of the Court by the cross-claimant it did not bring the appellant Fahey within the court's jurisdiction for the purpose of granting personal relief requested in the original complaint (A. B. 53).

In other words, appellants contend that while the court may have jurisdiction over the appellant Fahey in some particulars it does not have it in others, but appellants only express a doubt that jurisdiction over the appellant Fahey has been obtained in so far as the bringing of cross-claims in interpleader is concerned.

II.

Appellant Fahey Is Not an Indispensible Part to the Granting of the Relief Sought by This Appellee.

If multiplicity of suits is to be avoided, appellant Fahey is clearly a desirable party to the cross-claim of this appellee in interpleader, but this desirability does not make him an indispensible party, nor does it challenge the propriety or sufficiency of the service made upon him as described above. Appellants apparently did not take this point very seriously for while they raise it they state on page 56 of their brief, "We shall not argue the point." We take it from this comment that at least so far as the interpleading cross-claimants are concerned that the argument that the appellant Fahey is not a *proper party* to the cross-claims of the appellees Title Service Company and Robert H. Wallis is abandoned.

On the subject generally of joining the superior in an action against a local subordinate (A. B. 55 and 56; Note 26), only one of the cases was cited is in point and this is the case of *Naher v. Harwood*, 128 F. (2d) 848 at 849; certiorari denied, 317 U. S. 659. There the superior was held not to be an indispensible party where the constitutionality of the statute authorizing the administrative action was assailed. To the same effect see *Panama Refining Co. v. Ryan*, 293 U. S. 388; *Ryan v. Amazon Petroleum Corporation*, 71 F. (2d) 1, and *Chester C. Fosgate Co. v. Kirkland*, 19 F. Supp. 152, in which this Court on certiorari citation entertained this case on the merits in the absence of the Secretary of Agriculture.

See, also:

Colorado v. Toll, 268 U. S. 228;
Jarvis v. Shachelton Inhaler Co., 136 F. (2d) 116;
Esquire, Inc. v. Walker, 155 F. Supp. 1015;
American School v. McAnnulty, 187 U. S. 94;
Homer Glen Wilcox v. DeWitt, 144 F. (2d) 353.

It follows that if Section 5(D) of the Act is unconstitutional, the appellants in their representative capacities could have no claim to the property deposited in interpleader and the courts would require an idle act were the appellants to remain cross-defendants in interpleader after their action seizing the association had been found to be unlawful, and section 10 of the Decree [R. 499] holding that neither of the appellants in their representative capacities had any right, title, interest or claim to any of the properties interplead and deposited with the clerk by the defendants and cross-claimants in interpleader and that the appellants here, in their respective capacities, were permanently enjoined from ever asserting any claims, right, title or intrest in or to said property or any of it, was well justified by the record.

Judge Paul McCormick of the Southern District of California, in the case of *Coca-Cola Company v. Los Angeles Brewing Company*, 1 F. R. D. 67, in passing on a motion for a preliminary injunction to restrain the use of the term "coke" after ascertaining that a further hearing would be useless, proceeded to make his injunction permanent and in doing so used the following language in his opinion:

> "What is there here that can be modified or changed or that needs any further exploration? What factual situation is there that could be more

> definitely presented to the court in January than today? I think there is nothing. There may be many more affidavits filed on each side of the question. There may be a great deal of oral testimony developed on both sides of the issue. There may be extensive arguments made as to the effect of these matters, but upon analysis, the same issue will be present. If this is the case it should be determined summarily."

It appears to this appellee that either the disputed section is constitutional or is unconstitutional regardless of whether or not the appellant Fahey has been properly served or whether additional hearings are had. Neither the appellant Fahey nor anyone else can change the language of the Act. Mr. Fahey's most valuable contribution to a determination of the constitutionality of Section 5(d) of the Act is his assumption that the Act gives him full power at his own despotic caprice to seize institutions, built up by the life time efforts of American citizens, without complaint or hearing and by contending that the owners of the assets of a federal savings loan association are not privileged to any relief against him, or to use their own money to oppose him except perhaps in an administrative tribunal of his own choosing and subject to his own review. That an Act can be constitutional which will permit the appellants to so interpret their rights as to constitute themselves the plaintiffs, the investigators, the prosecutors, the trial judges, and the appellate judges of their own misdeeds is beyond the comprehension of this appellee. It is significant that the appellants did not, in the District Court, prior to the date of the decree, deny their bias, prejudice, and malice, although they have frequently been charged with the same [R. 101, 110, 113, 121, 122, 123, 131].

III.

The Answer and Cross-claim of This Appellee Raises the Issue of Unconstitutionality.

A. Paragraphs I, III, IV, VIII and X of appellee Wallis' cross-claim [R. 54-60] raise the issue of the constitutionality of Section 5(d) of said Act. If the Act is not constitutional the claims of the appellants will fall with it and the money represented by deposit in interpleader can then be distributed on the claims of the remaining cross-defendants.

B. If the appellant Fahey had no power to appoint a conservator under Section 5(d) of the Act there is no conservator to make a claim and, so far as this appellee is concerned, no occasion for an administrative hearing and no possible estoppel. This last statement becomes even more emphatic when it is realized this appellee did not ask for an administrative hearing, was not served with notice of such a hearing and knew that if any were held it would be prejudged for he had attended the Congressional Hearing [R. 104-118] and heard the appellant Fahey, (the head man) refer to the president of the Association's "unscrupulous practices" [R. 105] of course without naming any.

> "Mr. Lee: I don't think Mr. Gregory can ever get it back from that institution" [R. 110].

meaning the Federal Home Loan Bank Administration, or in the words of the appellant Fahey:

> "Mr. Lee: I am afraid they (the directors) will get backs . . ." [R. 110.]
>
> "Mr. Lee: What they were trying to do here was take this institution and do with it as they saw fit." [R. 117.]

Can one expect, or have any hope of a fair and impartial hearing from people who openly admit they are going to try to keep you out? Isn't it bad enough to try to be required to be heard by the party you want to sue? If appellants hadn't made the argument an administrative hearing was a prerequisite to suit, this appellee would not have taken it seriously.

IV.

Section 5(d) of Home Owners' Loan Act Constitutes an Unlawful Delegation of Legislative Authority.

The three-Judge Statutory Court below, after carefully considering the voluminous Points and Authorities and affidavits of the respective parties, and after listening to the arguments of respective counsel on the various motions presented to it, called for further briefs on the question of constitutionality [R. 318]. This was done by the various counsel. After considering the same, the Court no doubt, and properly, believed all parties had exhausted the subject of constitutionality and rendered its opinion, stating, in part, as follows [R. 376-378]:

> "It is argued that subsection (d), in attempting to authorize the board to make rules and regulations for the purposes mentioned in said subsection (d) delegates legislative power to the board without prescribing either adequate, or any statement of policy, standards, limitations or criteria to guide the board in exercising its functions and is contrary to Article I, Section 1, and Article I, Section 8 (paragraph 18), of the Constitution of the United States (U. S. C. A. Constitution, Article I, Sec. 8, Clause 18).

It is agreed that functions of the legislature may not be delegated by the Congress to any executive or executive department, hence, there is posed a single question for determination, to wit: Has the Congress made such a delegation in the sections of the Act under consideration? Fortunately the course to be followed in determining questions of this character had been well chartered by the Supreme Court of the United States. We have but to endeavor to make the proper application of the principles by said court enunciated to the conditions existing in the matter before us. We refer particularly to Panama Refining Co. v. Ryan, 293 U. S. 388, and Schechter v. U. S., 295 U. S. 495. We look to the statute to see whether the Congress has declared a policy with respect to the providing of rules and regulations for the reorganization, consolidation, merger, or liquidation of federal savings and loan associations, including the power to appoint a conservator or receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital stock of the same; and to release any such association from such control and permit its further operation;—'Whether the Congress has set up a standard for the president's (board's) action; whether the Congress has required any finding by the president (board) in the exercise of the authority' to do the things enumerated in Sec. 5(d) of the Act. (Panama Refining Co. v. Ryan, *supra*, p. 415.) It may be said of Sec. 5(d), as was said of the section involved in the Panama case, that it is 'brief and unambiguous.' It makes no attempt to lay down rules for the guidance of the board, nor does it state in what circumstances or under what conditions the board is to merge institutions or appoint a conservator or receiver. It establishes no criterion

to govern the board's course. It does not require any finding by the board as a condition of its action. No policy is declared by Congress as to merger, or appointment of conservator. The section gives to the Board unlimited authority to formulate rules for the board's action in the respects mentioned and to do so as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to govern itself. We are unable to find in the Act a declaration of policy, or standard of action which can be deemed to relate to the subject of section 5(d).

The Los Angeles Bank, with assets of $43,000,000 was merged with a Portland bank and later both with a bank in San Francisco. While the legality of this merger is not before us, we consider it because the aim of a statute may be learned 'both from its terms and from the administrative practice under it.' Schechter v. U. S., *supra*. The merger was made without notice or hearing of any character. In fact, none is required by the statute and herein lies a fatal defect as to its constitutionality.

We think due process requires a hearing on notice and this should be provided within the Act itself.

Comparison of the Home Owners Loan Act of 1933, as amended, under consideration here, with other acts of Congress which have been held unconstitutional because of improper delegation of legislative power, demonstrates that said Home Owners Loan Act fails to set up as comprehensive and definite statements of policy, standards, guides, criteria and limitations as do those acts.

We hold Section 5(d) of Home Owners Loan Act of 1933, as amended, unconstitutional and void as

attempting to delegate legislative power to the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act."

The opinions in the cases of:

A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. 495;

Panama Refining Co. v. Ryan, 293 U. S. 388;

Wichita Railroad & Light Co. v. Public Utilities Comm., 260 U. S. 48;

Morgan v. United States, 304 U. S. 1;

Butler v. United States, 297 U. S. 1;

Carter v. Carter Coal Co., 298 U. S. 238;

Yick Wo v. Hopkins, 118 U. S. 356;

Coe v. Armour Fertilizer Works, 237 U. S. 413;

Ohio Valley Water Co. v. Ben Avon Burrough, 253 U. S. 287

are all to similar effect.

It has been aptly said, "The law must be stable and yet it cannot stand still." It is submitted, however, that this old concept should not be distorted to read: "The law must not stand still long enough to become stable." This latter statement is popularly ascribed to Justice Cardozo, although specific authority for it has not been found. The problem of how much authority should be given to an administrative body is not a new one, and the principles involved and nationally recognized, were considered by the founding fathers of our nation, as was so ably discussed in the decision of this Court, contained in most of the law school case books, in the case of *Yick*

Wo v. Hopkins, 118 U. S. 356. We quote from pages 369 and 370, as follows:

"When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

The above case has been cited many times, and that it is still considered to be a live expression of the law, is evidenced by the reference to it by Mr. Justice Frankfurter in the recent case of *United States v. United Mine Workers*, 91 L. Ed. Adv. 595.

AIM OF STATUTE FROM ADMINISTRATIVE PRACTICES.

The aim of a statute may be learned "both from its terms and from the administrative practice under it."

Schechter Corp. v. U. S., 295 U. S. 495, concurring opinion of Justice Cardozo, p. 553.

The appellants' actions certainly contribute the aim of the statute as being to give to themselves unbridled power to do as they see fit and that whatever they choose to do is within the authority of the act even such actions as here where no one bothered to make any charges, or suggest any corrections or permit of any explanation or have any hearing or make any findings or permit of any witness' other testimony or cross-examination or consider the soundness of the institution over a period of many years. Apparently the act did not give to the directors a presumption of good faith or consider that with their years of experience they might know something about the business or the best interests of the shareholder members nor did they construe the act as requiring consideration being given to the shareholder members or depositors or that it was a serious matter to take management away from the elected representatives of the owners or that their capricious action would becloud the titles to some 8,000 homes.

As administrative practice is an aid in interpreting a statute this statute Sec. 5(d), can only be interpreted

as having no safeguards, policies, restrictions or guides limiting Emperor Fahey from seizing any institution which failed to vote for his choices to handle their money. After seizing and/or merging the institution he might graciously, on demand, allow a hearing before his representative but would not allow a review of his actions in court.

V.

Estoppel.

Although appellants argue "Appellees are estopped from contesting the validity of Section 5(d)". (A. B. 35), the argument in support of this contention ignores the appellees Wallis and Title Service Company. It is understood why they are ignored—on this point, for the argument cannot apply to either of them, as neither were organized or existed under any Act of Congress with which the Home Loan Bank Administration has any jurisdiction.

Appellee Wallis in his cross-claim independently raised the constitutional issue and appealed directly to the Court [R. 54-63].

Even if the argument could be directed against this appellee it is not well taken aside from the fact that no hearing could be required under an enactment itself unconstitutional.

The scope of the authority assumed by the appellant Fahey is beyond any conceivable valid grant. As Justice Cardozo stated in *A. L. A. Schechter Poultry Corp. v. United States*, 295 U. S. 495 at page 551:

> "There can be no grant to the executive of any roving commission to inquire into evils, and upon discovering them, to do anything he pleases to correct them."

The appellants' objection to the plaintiffs and others having recourse to the courts for protection against themselves is a reversal to the position taken by the Federal Home Loan Bank Administration in the hearings by the Congressional Committee. There Mr. Lee testified:

> "Now, I do want to make clear that we never have questioned and never would question the withdrawal of a fair and reasonable amount to challenge the authority of the Federal Home Loan Bank Administration. It has been done time and again, and can always be done." [R. 118.]

In the case of *Morgan v. United States*, 304 U. S. 1, this Court had before it the validity of the order of the Secretary of Agriculture fixing maximum rates to be charged by market agencies. A district court of three judges dismissed the complaint and the plaintiffs appealed. There had apparently been no objection to the holding of an administrative hearing or bias on the part of the hearers, but the Court there did find abuse of safeguards in the administration of the statute, and pointed out in considerable detail what safeguards and standards were required. The Court stated at page 14:

> "The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system of adherence to the basic principles that the legislature shall appropriately determine the standards of administrative proceedings of a *quasi*-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand a 'fair and open hearing' es-

sential alike to the validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard' . . . and in equipping the Secretary of Agriculture with extraordinary powers under the Packer's and Stockyards Act the Congress explicitly recognized and emphasized this requirement by making his action depend upon 'FULL HEARING.'" (Emphasis by the Court.)

The following language which appeared on page 18 might well be used in referring to the power to appoint a conservator:

". . . but a 'full hearing'—a fair and open hearing—requires more than that. The right to a hearing embraces not only the right to present evidence but also the opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be a barren one. Those who are brought into contest with the government in the *quasi*-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposals before it issues its final command."

Even if the provisions of Section 5(d) of the Home Owners' Loan Act of 1933 had included as a condition precedent, the holding of an administrative hearing, upon which it is entirely silent, the foregoing language would have been most applicable to it. However, since the Act did not contain any such provision, and in the exercise of its legislative power claimed to have been conferred upon it by said subsection, the Federal Home Loan Bank Administration attempted to supply the same by

providing its own administrative hearing. Without admitting that such an administrative hearing, if provided for to be held prior to the appointment of a conservator would have in any way strengthened the position of the appellants, it is definitely noted and the attention of the court is invited to the fact that such administrative hearing is only provided for after the seizure of the property by a conservator. The following language taken from page 23, is illustrative of what an act should contain which purports to make such delegation of legislative discretionary power as does that in the instant case:

> "The maintenance of proper standards on the part of administrative agencies in the performance of the *quasi*-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concept of fair play."

Added to the fatal defects contained in the act under consideration in the case described above, we have in this case, the attempt on the part of a federal official, the appellant Fahey, to hold an administrative hearing by his own representative to recommend to himself the ultimate finding as to whether or not his superior had acted in good conscience and within his constitutional rights in seizing the Association, and if the appointed examiner were familiar with the previous utterances of his superiors in the Congressional Hearing, as described above, he would no doubt know what recommendations he was expected to make.

VI.

Distinction Between Conservator and Receiver.

Appellants have used twelve (12) pages (A. B. 58-72) in an effort to convince the Court that the mere connotation of the word "conservator" amounts to a sufficient guide to clothe Section 5(d) of Home Owners' Loan Act of 1933 with a constitutional garb, although the appellants have cited *Smith v. Witherow*, 102 F. (2d) 638, 642, as holding that the conservator's appointment is the "equivalent of the appointment of a receiver of a corporation with leave to continue the business and quite similar to the appointment of a trustee in a proceeding for the re-organization of a corporation under the Bankruptcy Act, 11 U. S. C. A., Section 207." The notation referred to evidences the paternity of a receiver in a constitutional judicial body, *i. e.*, a court, but it still leaves the paternity of a "conservator" highly in doubt.

It is submitted that the effort to make such a distinction is based upon a hope on the part of the appellant Fahey that by appointing a conservator instead of a receiver, it might not appear too obvious that he was attempting to usurp an additional judicial function in so doing.

Conclusion.

The decree of the District Court appealed from herein should be upheld and for the following reasons:

1. The trial court had absolute jurisdiction of the subject matter and of the parties introduced by the cross-claim in the nature of interpleader of this appellee, as well as the broad equity jurisdiction to determine the issues raised in the pleadings in the original action;

2. Section 5(d) of the Home Owners' Loan Act is unconstitutional and all acts done under its supposed authority fall with it;

3. The appellant Fahey was not an indispensable party to the determination of the issue of the constitutionality, nor to the determination of the cross-claims in the nature of interpleader;

4. No one, certainly not this appellee, is estopped from contesting the validity of Section 5(d);

5. An act repugant to the Constitution cannot become valid by estoppel;

6. Under Section 54 of the Federal Rules of Civil Procedure the decree was not premature and nothing could be gained by delaying a decision;

7. Had the trial court held otherwise than as it did, there would have been a multiplicity of actions on the same subject and a greater delay in bringing them before this tribunal for final decision;

8. If an administrative official is to be permitted to usurp the powers of the courts by acting as defendant, witness, prosecutor, judge and sole court of appeal, there will be little justification for the statement that this "is a government of laws and not of men."

Respectfully submitted,

ROBERT H. WALLIS,

Appellee.

No. 687

In the Supreme Court of the United States

October Term, 1946.

John H. Fahey and A. V. Ammann, Individually and Respectively as Federal Home Loan Bank Commissioner and Conservator for the Long Beach Federal Savings and Loan Association,

Appellant,

vs.

Paul Mallonée, C. H. Newhouse, Winnie Bucklin, *et al.*

Appellees.

On Appeal from the District Court of the United States for the Southern District of California.

BRIEF OF APPELLEE FEDERAL HOME LOAN BANK OF LOS ANGELES.

Louis W. Myers,
Pierce Works,
433 South Spring Street, Los Angeles 13, California.
Richard Fitzpatrick,
756 South Broadway, Los Angeles 14, California.
Attorneys for Appellee Federal Home Loan Bank of Los Angeles.

O'Melveny & Myers,
John Whyte,
Howard J. Deards,
Of Counsel.

Parker & Company, Law Printers, Los Angeles. Phone TR 5296.

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In the Supreme Court of the United States

OCTOBER TERM, 1946.

No. 687

JOHN H. FAHEY AND A. V. AMMANN, INDIVIDUALLY AND RESPECTIVELY AS FEDERAL HOME LOAN BANK COMMISSIONER AND CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,

Appellant,

vs.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, *et al.*

Appellees.

On Appeal from the District Court of the United States for the Southern District of California.

BRIEF OF APPELLEE FEDERAL HOME LOAN BANK OF LOS ANGELES.

Statement.

This appellee accepts the Statement of the Case set forth in the Brief for Appellants, subject to any modifications or corrections which may be suggested by other appellees herein. The background relative to this appellee's connection with the litigation will be set forth in the course of its discussion of the point raised by appellant to the effect that the third party complaint against the Federal Home Loan Banks, including this appellee, was erroneously allowed.

Summary of Argument.

I. The District Court did not err in passing upon the constitutionality of Section 5(d) of the Home Owners' Loan Act.

A. Under the facts of this case, the rule which ordinarily requires an exhaustion of administrative remedies has no application.

1. If, as is contended on the merits, Section 5(d) is unconstitutional, appellees were under no duty to seek an administrative hearing. The present question must therefore be subordinated to the decision on the merits.

2. If, as the record reveals, the holding of the Administrative hearing was enjoined upon the ground, *inter alia*, that the issue presented therein was purely one of law, the District Court did not err in enjoining the holding of such hearing.

3. If, as the record reveals, the charges of bias and prejudice upon the part of the Administrator were not only supported by affidavit or other evidence, but stood uncontradicted, the District Court did not err in enjoining the holding of the administrative hearing, for in such a case it cannot be said that the court committed an abuse of discretion.

B. Appellees are not estopped from contesting the validity of Section 5(d) of the Act.

1. Section 5(d) is and was intended to be severable in its provisions, with the result that the rule has application which permits an attack upon the con-

stitutionality of a severable portion of an otherwise valid statute under which benefits have been received.

a. One who accepts the benefits of a statute is not thereby precluded from asserting the constitutional invalidity of a separable portion thereof.

C. The presence or absence of Fahey as a party was wholly immaterial in so far as the main question on this appeal is concerned: Whether or not the assets and properties of the Long Beach Association should be returned for the constitutional reasons declared by the three judge court.

1. Appellants, in the court below, expressly disclaimed that Fahey was an indispensable party in so far as the constitutional question was concerned, and their motion to dismiss was not pressed in this regard. As a result, their arguments with reference to the presence or absence of Fahey go only to the form of the decree and do not affect the question as to whether the three judge court was right or wrong on the merits in holding Section 5(d) unconstitutional.

2. The present cause is an action brought to enforce a claim to real and personal property within the district where the action was brought, within the meaning of Section 57 of the Judicial Code; and such relief *in personam* as was prayed was purely incidental to the enforcement of such claim.

3. In an action where, as here, relief against administrative acts is sought on constitutional grounds, the presence or absence of the superior (here Fahey) is immaterial in any event.

II. Section 5(d) of the Home Owners' Loan Act is unconstitutional for failure to specify reasonably definite standards for administrative action.

A. Appellants' recourse to functional definitions, the general body of equity jurisprudence, the laws of the forty-eight states and other collateral material in an effort to impute standards where none have been provided by Congress, only serves to emphasize the deficiencies of the statute in this regard.

B. A comparison of Section 5(d) with kindred enactments of Congress likewise emphasizes the deficiencies of the section in so far as any standard is concerned.

III. The District Court did not err in entering a final judgment.

A. Entry of a final judgment without a trial is warranted where there are no material issues of fact to be tried.

1. Since it was conceded that the assets of the Long Beach Association were seized under the purported authority of Section 5(d) of the Home Owners' Loan Act, the responsive pleadings of defendants raised and could have raised no material issue of fact in view of the holding of unconstitutionality.

IV. The third party complaint against the Federal Home Loan Banks, including this appellee, was properly allowed.

A. Permission to file a third party complaint is discretionary, and under the facts here present there was no abuse of discretion.

ARGUMENT.

At the threshold of our discussion, and before passing to the questions involved in a decision of the cause on the merits, it becomes necessary to consider the contentions of appellants that the three judge court should not have passed upon the constitutionality of Section 5(d) of the Home Owners' Loan Act, 12 U. S. C. 1464(d).

In this behalf, it is said that appellees should have exhausted their administrative remedy (as attempted to be provided by Paragraph 206.2 of what appellants, Br. p. 29, term the applicable regulations) before seeking judicial relief; that appellees were in any event estopped from contesting the validity of Section 5(d); and that, lastly, the District Court's asserted lack of jurisdiction over Fahey prevented the granting of "much, if not all," of the relief against appellants. These contentions will be answered in the order in which we have above set the forth.

I.

Under the Facts of This Case, the Rule Which Ordinarily Requires an Exhaustion of Administrative Remedies Has No Application.

In order intelligently to discuss this question, it is first necessary to have brief recourse to the record. Paragraph 206.2 of the regulations, mentioned above, provides that a non-consenting Federal association (as here appellee Long Beach Federal Savings & Loan Association) may apply for a hearing to contest the appointment of a conservator or receiver, such application to be made within 14 days after such appointment. No such right is, even purportedly conferred by the regulation upon persons in the position of the plaintiffs below, who are shareholder members of such association. [R. 3-4.] Within the time

specified by the regulations, appellee Long Beach Association demanded a more definite statement of the causes for the appointment of the conservator and also demanded the hearing mentioned above. [R. 83, 84, 86-87, 92-94.] The plaintiffs, appellee shareholders, sought for and obtained a preliminary injunction restraining the holding of such hearing [R. 98-124, 236-245], upon the grounds that, in substance, the Administrator was biased and prejudiced, had already prejudged the question, and that in any event, any determination of the matter would rest upon the solutions of questions of law, and particularly of constitutional law, alone. This application was joined in by appellee Title Service Co. [R. 125-139], and, ultimately, by the Long Beach Association, whose counsel stated its position to the District Court, at the time the preliminary injunction was issued, as follows [R. 567-8]:

> "Mr. Walker (Counsel for defendants): May I ask a question of counsel? Do you withdraw, on behalf of the Association, the request for an administrative hearing?
>
> "Mr. Chapman (Counsel for appellee Long Beach Association): No, we would like to get someone whom we consider has not already prejudged us to hear the question of whether we should be seized and confiscated or not. When we applied for this hearing we hadn't heard the congressional committee testimony and we hoped we might get someone impartial. After the congressional hearing* you announced back there that we would never get our association back.

*Reference is had to hearings preceding report of Select Committee to Investigate Executive Agencies, House Report No. 2659, 79th Congress, 2d Session, dealing with the seizure by the Home Loan Bank Administration of the Federal Home Loan Bank of Los Angeles and the Long Beach Federal Savings and Loan Association.

That has not been denied. That has been put in the record here. We certainly do not intend to submit to that kind of a hearing unless Your Honor or someone orders us to."

In this state of the record the true question would seem to be, not whether appellees were debarred from relief in failing to exhaust their administrative remedy, if any, but, rather, whether the District Court erred in granting the preliminary injunction restraining the holding of the administrative hearing. (We shall deal later with the proposition as to whether or not the court properly granted the permanent injunctions complained of.) Each of these alternative questions is, however, completely answered by the propositions stated below.

A. If, as Is Contended on the Merits, Section 5(d) Is Unconstitutional, Appellees Were Under No Duty to Seek an Administrative Hearing. The Present Question Must Therefore be Subordinated to the Decision on the Merits.

It is well settled that where the statute under attack (as here Section 5(d)) is void upon its face, an exhaustion of administrative remedies or other recourse to the statutory procedure is not required prior to the institution of judicial proceedings. *Lovell v. Griffin*, 303 U. S. 444; *Smith v. Cahoon*, 283 U. S. 553; *Euclid v. Amber Realty Co.*, 272 U. S. 365; *Skinner & E. Corp. v. U. S.*, 249 U. S. 557; *Yarnell v. Hillsborough Packing Co.*, 5 Cir., 70 F. (2d) 435.

Here, of course, the basic claim of appellees was that Section 5(d), the statutory source of the regulations under consideration, is void; and the lower court so held. If the court was right, under the authorities above cited a recourse to the hearing procedure was unnecessary; if it was wrong, a matter which may only be determined

after an examination into the merits of this appeal, the question of whether recourse to the administrative practice should have been had becomes, a matter of purely academic importance. The result is that in any event the question must and should be subordinated to the decision on the merits herein.

B. If, as the Record Reveals, the Holding of the Administrative Hearing Was Enjoined Upon the Ground, Inter Alia, That the Issue Presented Therein Was Purely One of Law, the District Court Did Not Err in Enjoining the Holding of Such Hearing.

As we have seen, the enjoining of the administrative hearing was sought and granted upon two grounds: (1) that the Administrator was biased and prejudiced and (2) that the question presented, namely, the constitutionality of Section 5(d), was purely a question of law.

It cannot be denied that the gist of appellees' whole case, so far as the issues material to this appeal are concerned, lay in the claim that Section 5(d) involved an unconstitutional delegation of legislative power. [R. 616, 625.] It likewise cannot be denied that this claim presented purely and simply a question of law. The result is that the well established rule that the prerequisite of a preliminary resort to administrative authority is dispensed with when the issue is purely one of law, and as such, determinable without reference to the exercise of administrative discretion, is here fully applicable. *W. P. Brown & Sons Lumber Co. v. Louisville & N. R. Co.*, 299 U. S. 393; *Baltimore & O. R. Co. v. Brady*, 288 U. S. 448; *Great Northern R. Co. v. Merchants Elevator Co.*, 259 U. S. 285; *Pennsylvania R. Co. v. Puritan Coal Min. Co.*, 237 U. S. 121.

C. If, as the Record Reveals, the Charges of Bias and Prejudice Upon the Part of the Administrator Were Not Only Supported by Affidavit or Other Evidence, But Stood Uncontradicted, the District Court Clearly Did Not Err in Enjoining the Holding of the Administrative Hearing, for in Such a Case it Certainly Cannot be Said That the Court Committed an Abuse of Discretion.

We start, of course, with the general principle that the granting or denying of a preliminary injunction is within the sound discretion of the trial court, whose action will not be reviewed unless an abuse of discretion clearly appears. *Rogers v. Hill*, 289 U. S. 582; *State of Alabama v. United States*, 279 U. S. 229; *Prendergast v. N. Y. Telephone Co.*, 262 U. S. 43; *Meccano, Ltd. v. Wanamaker*, 253 U. S. 136; *Gaines Dry Cleaners v. City of Chicago*, 7 Cir., 123 F. (2d) 104; *Hannan v. City of Haverhill*, 1 Cir., 120 F. (2d) 87; *Federal Trade Commission v. Thomsen-King & Co.*, 7 Cir., 109 F. (2d) 516.

The question here was whether the evidence submitted to the District Court in the form of affidavits and attached exhibits was sufficient to render inapplicable the rule that a court will ordinarily presume that administrative officers will discharge their duties fairly and impartially.

As to this there can be but one answer. Without going into great detail, the record shows that a direct charge of bias and prejudice on the part of the Administrator was made [R. 101], *and nowhere denied*. It was likewise di-

rectly charged, by affidavit, that the Administrator and other responsible officers of the Federal Home Loan Bank Administration "have prejudged, determined, concluded and decided before hearing that they will not, under any circumstances irrespective of evidence submitted, ever return to the Long Beach Federal Savings & Loan Association and its duly elected officers and directors, whoever they may be, the assets of said Association, . . ." [R. 123.] This charge was likewise not denied.

We thus find specific charges of unfairness which stood wholly uncontradicted. Under these circumstances, we venture the opinion that the District Court would have abused its discretion if it had *not* enjoined the holding of what would have been but a sorry caricature and mockery of a "hearing." Compare *Morgan v. United States*, 304 U. S. 158; *Tumey v. Ohio*, 273 U. S. 510; *National Labor Relations Board v. Phelps*, 5 Cir., 136 F. (2d) 562; *Inland Steel Co. v. National Labor Relations Board*, 7 Cir., 109 F. (2d) 9.

It is respectfully submitted that for the reasons above given, the question of exhaustion of remedies is entirely a false quantity in this case.

We now turn to the claim that appellees are estopped from contesting the validity of Section 5(d).

II.

Appellees Are Not Estopped From Contesting the Validity of Section 5(d) of the Act.

The claim is made that because the Long Beach Association was organized under Section 5 of the Act,* because it agreed in its charter, both original and as amended, that it was subject to the provisions of the Act and to the rules and regulations made thereunder and because it has enjoyed the benefits of the Act since, it is now estopped to assert the invalidity of what appellants claim to be an "integral" part of the Act.

The presence of the word "integral" in appellants' chain of reasoning is the weak link in their argument, for Section 5(d) is clearly severable.

A. Section 5(d) Is and Was Intended to be Severable in Its Provisions, With the Result That the Rule Has Application Which Permits an Attack Upon the Constitutionality of a Severable Portion of an Otherwise Valid Statute Under Which Benefits Have Been Received.

The claim that Section 5(d) is an integral part of the statute is gratuitously made, is supported by neither reason nor authority and is directly contrary to the expressed intention of Congress when it enacted the statute.

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*This is, of course, an understandable overstatement on the part of appellants, as the course of the argument will show. The fact is that the Association was incorporated under Section 5(a) of the Act, which embodies a complete plan for the organization, incorporation, examination, operation, and regulation of federal savings and loan associations.

When Congress enacted the Home Owners' Loan Act, it enacted, as a part thereof, Section 9 (12 U. S. C. 1468), *a separability clause* which provides as follows:

> "If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby. June 13, 1933, c. 64, §9, 48 Stat. 135; Apr. 27, 1934, c. 168, §15, 48 Stat. 647."

This enactment, of course, amounted to a clear expression of the Congressional intent that no constitutionally invalid provision of the Act should be deemed to be incapable of being severed therefrom, since the balance of the Act was to stand unaffected. It follows that it was likewise the Congressional intent that no provision of the Act should be regarded as an "integral" portion of the Act in the face of an attack upon its constitutional validity. As said by this Court in *Electric Bond & Share Co. v. Securities and Exchange Commission*, 303 U. S. 419, 434, with reference to an almost identical clause in the Public Utility Holding Co. Act of 1935, 49 Stat. 803:

> "This provision reverses the presumption of inseparability—that the legislature intended the Act to be effective as an entirety or not at all. Congress has established the opposite presumption of divisibility. Williams v. Standard Oil Co., 278 U. S. 235, 242; Utah Power & Light Co. v. Pfost, 286 U. S. 165, 184; Champlin Refining Co. v. Corporation Commission, 286 U. S. 210, 235. Congress has thus said that the statute is not an integrated whole, which as such must be sustained or held invalid. On the contrary, when validity is in question, divisibility and not

integration is the guiding principle. Invalid parts are to be excised and the remainder enforced. When we are seeking to ascertain the congressional purpose, we must give heed to this explicit declaration."

Once this point is reached, the true question appears: May one who has accepted the benefits of a statute generally, be held to be estopped to attack a severable and unconstitutional portion thereof? And the authorities uniformly hold that this question must surely be answered in the negative.

1. One Who Accepts the Benefits of a Statute Is Not Thereby Precluded From Asserting the Constitutional Invalidity of a Separable Portion Thereof.

The above principle is clearly established both with reference to statutes which, as here, contain a severability clause, *United States v. Rappeport*, D. C. N. Y., 36 F. Supp. 915, affirmed 2 Cir., 120 F. (2d) 236; *Kristanik v. Chevrolet Motor Co.*, 335 Mo. 60, 70 S. W. (2d) 890, and with reference to statutes as to which severability of the offending provision has been determined despite the absence of such a clause. *W. W. Cargill Co. v. Minnesota*, 180 U. S. 452; *Chevy Chase Sanatorium v. District of Columbia*, 46 App. D. C. 558; *State v. Consumers Public Power District*, 143 Neb. 753, 10 N. W. (2d) 784; *May v. City of Kearney*, 145 Neb. 475, 17 N. W. (2d) 448; *Petition of Philadelphia, M. & S. St. R. Co.*, 203 Pa. 354, 53 Atl. 191. This principle is basic in the law of California, appellees' home state. *Mojave River Irr. District v. Superior Court*, 202 Cal. 717, 262 Pac. 724; *California Delta Farms, Inc. v. E. Bay Municipal*

Utility District, 202 Cal. 793, 262 Pac. 729. In the *Mojave* case mentioned above, the California Supreme Court said (p. 730):

> "We do not think that the principle of estoppel can be so far applied as to prevent a party who may be entitled to the benefits to be obtained by application to an administrative board or officer from asserting in a court of justice that other and severable portions of the law under which he makes such application and receives such benefit, and which impair his full enjoyment thereof, are void because violative of the constitution; nor do we think the cases cited by the respondents sustain so extreme an application of the principle of estoppel. We find no merit, therefore, in this final contention."

The following language from *Morse v. Metropolitan S.S. Co.*, 88 N. J. Eq. 325, 102 Atl. 524, affords perhaps the most direct answer to appellants' contentions here:

> "The argument advanced by counsel for the respondent in support of the constitutionality of the provision in section 65 of the act for the appointment of a statutory receiver without notice, with the rights and powers under section 68 of the act, is that, because the defendant was incorporated under that act, has only such privileges as the state by the statute gives it, and allowed itself to come into existence under a charter from the state, which was expressly subject to the liability that under conditions which come within the purview of the statute application could be made to the court and a receiver appointed, and which terms the defendant accepted by incorporating under the act, therefore it is not depriving the defendant of any of its rights or due process of law, since the defendant must be considered to have

waived its rights when it accepted the charter under a statute containing these provisions.

"The unsoundness of this contention is apparent. Persons, whether natural or artificial, will be presumed to have entered into a contract with reference to the valid laws of the state. Only the provisions of the contract which are legally enforceable will control the parties thereto. The fact that the defendant incorporated under an act which contained an unconstitutional provision cannot render the provision enforceable, nor confer any power on the court to enforce it."

The authorities cited by appellants as to this phase of the case do not stand close analysis. Upon examination they fall into the following categories, none of which are of any aid to appellants as regards the question under discussion:

1. Cases in which a person who had accepted benefits under a particular act was held estopped to challenge the constitutionality of the *entire* act. *Booth Fisheries Co. v. Industrial Commission*, 271 U. S. 208; *American Bond & Mortgage Co. v. United States*, 7 Cir., 52 F. (2d) 318; *North Dakota-Montana W. G. Association v. United States*, 8 Cir., 66 F. (2d) 573; *Moor v. Texas & N. O. R. Co.*, 5 Cir., 75 F. (2d) 386; *Daniels v. Tearney*, 102 U. S. 415.

2. Cases in which it was claimed that a statute was being unconstitutionally *applied* rather than that the statute itself was unconstitutional. *Pierce Oil Corp. v. Phoenix Refining Co.*, 259 U. S. 125; *St Louis Malleable Casting Co. v. Prendergast Construction Co.*, 260 U. S. 469; *Shepard v. Barron*, 194 U. S. 553.

3. Cases in which the particular section of a statute attacked as unconstitutional was an integral part and an *inseparable condition* of the section under which a benefit had been received. *Nuckolls v. United States,* 10 Cir., 76 F. (2d) 357; *Electric Co. v. Dow,* 166 U. S. 489; *Eliason v. Wilborn,* 281 U. S. 457; *Grand Rapids & Indiana Railway Co. v. Osborn,* 193 U. S. 17; *United States v. San Francisco,* 318 U. S. 16.

4. Cases holding that one cannot both assail the integral portions of a statute and rely upon it in the same proceeding. *Hurley v. Commission of Fisheries,* 257 U. S. 223; *Baltimore & Ohio Railroad Company v. Lambert Run Coal Company,* 4 Cir., 267 F. 776; *Buck v. Kuykendall,* 267 U. S. 307; *Wall v. Parrot Silver & Copper Co.,* 244 U. S. 407; *United Fuel Gas Co. v. Railroad Commission,* 278 U. S. 300.

5. Cases which, if they have any application to the question at all, are favorable to the contentions of appellees. *Ashwander v. Tennessee Valley Authority,* 297 U. S. 288; *Frost v. Corporation Commission,* 278 U. S. 515.

We now turn to the questions raised by appellants with reference to the asserted lack of jurisdiction of Fahey and the claim that the latter is an indispensable party to the granting of "much, if not all, of the relief secured by appellees."

III.

The Presence or Absence of Fahey as a Party Was Wholly Immaterial Insofar as the Main Question on This Appeal Is Concerned: Whether or Not the Assets and Properties of the Long Beach Association Should Be Returned for the Constitutional Reasons Declared by the Three-Judge Court.

A. Appellants, in the Court Below, Expressly Disclaimed That Fahey Was an Indispensable Party in so Far as the Constitutional Question Was Concerned, and Their Motion to Dismiss Was Not Pressed in This Regard. As a Result, Their Arguments With Reference to the Presence or Absence of Fahey Go Only to the Form of the Decree and Do Not Affect the Question as to Whether the Three Judge Court Was Right or Wrong on the Merits in Holding Section 5(d) Unconstitutional.

It is said by appellants that Fahey was an indispensable party *at least* as to the injunction against merger of the Long Beach Association and against the holding of an administrative hearing. We have already shown that the matter of the administrative hearing was and is a wholly false quantity under the facts of this case; and that plaintiffs and the Long Beach Association were entitled to seek appropriate relief for the seizure of the latter institution without going through what the uncontradicted showing of the supporting affidavits demonstrated would have been a useless formality.

As to the matter of the injunction against a merger, the propriety of this phase of the relief granted by the District Court depends fully as much upon the solution

of the constitutional question as to the validity of Section 5(d) as does the phase adjudicating the constitutional invalidity of the seizure. This is necessarily so, for Section 5(d) is the vehicle whereby Congress attempted alike to convey to the Board [Administrator: Ex. Ord. 9070] power to *merge* and consolidate as well as the power to liquidate, "including the power to appoint a conservator or a receiver." If, therefore, as is argued on the merits, Section 5(d) is constitutionally deficient in setting up a standard prescribing the conditions under which associations may be seized and placed in the hands of conservators, it is equally deficient in failing to prescribe a similar standard with reference to mergers, for in neither case may valid official action be taken as a matter of mere whim, personal animosity or for other capricious or arbitrary reasons.

We thus point out the fact that the constitutional question is inescapably present as to both seizure and merger for the reason that in the lower court counsel for appellants expressly disclaimed Fahey's indispensability in so far as the constitutional question as to the validity of Section 5(d) was concerned and expressly refrained from pressing their motion to dismiss in this regard. We quote from the record [R. 675]:

> "Judge Hall. In your motion to dismiss on the ground that Fahey is an indispensable party, and could not be joined in this district in this action, you assert the right to present that motion regardless of whether we are only considering the constitutionality of the statute, or in view of the announcement by the presiding judge that we are limiting the consideration to the constitutionality of the statute, you

are abandoning your motion on the ground that he is an indispensable party?

Mr. Walker. I would like to do neither, your Honor. I would like to defer the argument on it, reserving my point until the court has ruled on the constitutional provision.

Judge Hall. If Fahey is an indispensable party to this suit; doesn't that go to our jurisdiction?

Mr. Walker. Not so far as the constitutional question goes, under the authority of the Nehr* decision. I want to preserve my position.

Judge Hall: I understand. In other words, you do not press your motion to dismiss on the ground of an indispensable party, in opposition—

Mr. Walker. To the constitutional question."

It thus appears, on the record, that the question of Fahey's indispensability was withdrawn from the court's consideration by the appellants in so far as the constitutional question—*the only question presented to the three judge court*—was concerned. From this it follows that appellants' present arguments as to the presence or absence of Fahey and the scope of the relief granted as against him do not touch or concern the main issue in the case—whether or not the assets and properties of the Long Beach Association should be returned to it and its officers because of an unconstitutional and unlawful trespass and ouster. What appellants argue for in this connection, therefore, is not for a *reversal* of the de-

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*Neher v. Harwood, 9 Cir., 128 F. (2d) 846, hereinafter cited to point that where, as here, the attack is upon the constitutional or other authority of the principal officer, he is not an indispensable party.

cree, but for its modification in respect of certain features applicable only to the non-resident Fahey. In this connection they contend that the provisions of Section 57 of the Judicial Code, 28 U. S. C. §118, are inapplicable to the present case, a contention to which we now turn.

B. The Present Cause Is an Action Brought to Enforce a Claim to Real and Personal Property Within the District Where the Action Was Brought, Within the Meaning of Section 57 of the Judicial Code; and Such Relief in Personam as Was Prayed Was Purely Incidental to the Enforcement of Such Claim.

Appellants' principal objections to the applicability of Section 57 of the Judicial Code seem to stem from the fact that relief *in personam* by way of injunction and accounting was prayed. From this, appellants argue that "the main relief" sought is *in personam* rather than an adjudication of property rights. In so contending, they studiously ignore the plain fact that the gist of the cause of action pleaded was the recovery of the $26,000,000 in assets seized by the conservator Ammann, and that every species of relief *in personam* prayed was in aid of attaining that end.

Thus the complaint alleged that real and personal property of the Association situated within the district had been on May 20, 1946, "unlawfully seized, diverted and are now unlawfully held by and detained by and in the possession of" the defendants. [R. 3.] As far as the real property was concerned, this amounted to an allegation, by an owner out of possession, of a wrong-

ful ouster; in other words, the equivalent of a perfect cause of action in ejectment. Compare, for instance, *Spencer v. Kansas City Stockyard Co.*, C. C. Mo., 56 Fed. 741; *Elk Garden Co. v. Thayer Co.*, C. C. Va., 179 Fed. 556. As far as the personal property was concerned, the requisite elements of a case of action in replevin appear. In either case, the complaint certainly stated a "claim to * * * real or personal property"; *and that is all that Section 57 requires to warrant substituted service upon absent defendants.*

It is said that the "main relief" prayed and granted was personal in nature. On the contrary, the main relief prayed was that the officers of the Long Beach Association be restored to full possession of all the property and assets of the association and be restored to and placed in full control of the business thereof. [R. 15.] The other relief prayed, removal of the conservator, injunction and accounting were all secondary to the prayer for restoration to possession and control.

If, as appellants seem to think, the applicability of Section 57 to an action is destroyed because incidental relief *in personam* is prayed or granted, they are sadly in error. See, for instance, *Jellenik v. Huron Copper Mining Co.*, 177 U. S. 1 (substituted service under Act of March 3, 1875 upheld in action to remove cloud upon title to corporate stock; complaint prayed, *inter alia*, injunctive relief against the adverse claimants, the taking of an accounting, and the setting aside of a purported sale

of the stock); *Harvey v. Harvey*, 7 Cir., 290 Fed. 653 (quoted below); *De Rees v. Costaguta*, 2 Cir., 275 Fed. 172 (accounting in aid of action to enforce lien).

The true nature of the incidental powers of the court in an action of this type is excellently set forth in *Harvey v. Harvey*, where the court said:

> "Appellant's contention that the injunction granted relief *in personam* and therefore cannot be based upon service under section 57, which applies to actions *in rem*, is not well founded. This suit is in the nature of a suit to quiet title to personal property within jurisdiction of the court. The court has in its custody the *res*. It puts out its protecting hand and says to the defendants that the plaintiff claims the *res*; that pending the determination of that claim the *statu quo* shall be maintained and the defendants restrained from using the *res*; that if they desire to contest the claim of the plaintiff to this property they shall come into court and do so. Incidental to its jurisdiction over the *res*, the court may use its power of injunction, not to prevent distinctly personal acts by the defendants, disconnected with the *res*, but to prevent the defendants interfering with, disposing of, converting, injuring, or wrongfully using the *res*." (p. 659.)

The foregoing reasoning is fully applicable here, for it is manifest that the relief *in personam* was purely in aid of the exercise of the court's jurisdiction *in rem* over the assets and properties themselves.

C. In an Action Where, as Here, Relief Against Administrative Acts Is Sought on Constitutional Grounds, the Presence or Absence of the Superior (Here Fahey) Is Immaterial in Any Event.

Viewed as an action to which the extra-district process of Section 57 is applicable, the presence or absence of Fahey as a party is of little or no practical importance. Service of process upon him in the District of Columbia conferred upon him the right to appear and defend his actions if he chose. If he did not so choose, the court nevertheless had jurisdiction *in rem* to adjudicate the return of the assets and properties to the Association. If, as is here so bitterly contended, the decree should not have granted injunctive relief as against Fahey, that is a matter of importance only to him alone and one which does not affect in the slightest the court's main holding that the assets and properties under the court's jurisdiction should be returned to the Association.

On the other hand, if we adopt for purposes of argument the contention that the action was strictly *in personam*, the result nevertheless remains unchanged in so far as the principal adjudication of return of the assets is concerned. Ammann, the conservator, was duly served in the district, is before the court and subject in all respects to the court's decree with reference to returning the assets.

The presence or absence of Fahey, on the other hand, becomes immaterial on the *in personam* theory because of the well settled rule (conceded below, as we have shown)

that the presence of the superior is not required where, as here, the attack is upon the *authority* in law to perform the act complained of, as distinguished from an attack upon the ground of abuse of discretion or other impropriety aside from lack of constitutional or statutory authorization. *Colorado v. Toll,* 268 U. S. 228; *Neher v. Harwood,* 9 Cir., 128 F. (2d) 846; *Berdie v. Kurtz,* 9 Cir., 75 F. (2d) 898.

In this connection the claim is made by appellants (Br. p. 55) that the necessity of joining the superior is a matter of "widely conflicting decision." Recourse to the decisions will show, as pointed out in *Neher v. Harwood,* that there is no conflict whatever on the proposition that where the plaintiff claims the statute is unconstitutional, as was claimed and held here, the presence of the superior may and should be dispensed with.

For the reasons given above, it is submitted that the presence or absence of Fahey was wholly immaterial on the main question of return of the assets. We now take up the question of the constitutionality of Section 5(d).

IV.

Section 5(d) of the Home Owners' Loan Act is Unconstitutional for Failure to Specify Reasonably Definite Standards for Administrative Action.

Section 5(d), 12 U. S. C., §1464(d), provides as follows:

> "The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

In approaching the question of its constitutionality, we agree with appellants (Br. p. 58) that there is here involved no question as to *what* Congress intends to do in the section; namely, to vest in the Bank Administration the *power* to appoint a conservator or a receiver to take over the affairs of an association. We also agree that the sole question in this regard concerns the occasions for the *use* of such power. Whether Congress has sufficiently indicated to the Bank Administration (and we may add, to the potential victims of its *exercise*) the standards and policy which should govern the administrative use of this plenary power to seize and administer, wholly *ex parte*, assets and properties aggregating millions of dollars.

There is, of course, no issue as to the basic proposition that in order for the Act to stand the test of constitutionality in this regard, Congress must have provided, by some manner or means, a reasonably definite guide or

standard governing *when*, which is to say, upon what occasion or under what circumstances, this vast power is to be exercised.

Appellants understandably seek to minimize the extent of this power when they speak of the "narrow reach" of the statute; treat of the power as a "restricted one"; and assert that the range of the discretion in this regard is "necessarily limited." We are necessarily led to inquire in this regard where and how Congress has "restricted" the power or "limited" the discretion when in the same breath appellants assert that the Administrator may make the equivalent of a "most favored nation" use of the *permissive* features of (a) dictionary definitions of the words "conservator" and "receiver"; (b) the constantly expanding body of equity decisions in this field; (c) the statutes governing similar associations in the forty-eight states, the District of Columbia and, we assume, the territories and insular possessions; (d) related Federal statutes, and, last but by no means least, (e) the history of the times and, in particular, of mutual loan associations. These extravagant claims, with all respect, argue much more forcibly than can we that Congress has not prescribed any constitutionally adequate standard whatever as to when and under what circumstances the power of seizure conferred by this Act should be exercised, with attendant results*

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*During the four days following the seizure on May 20, 1946, withdrawals from the Long Beach Association ran as high as $2,000,000 per day; and the aggregate for the first five days was between six and seven million dollars, or more than 25% of the total deposits. (R. 13, 25.)

A. Appellants' Recourse to Functional Definitions, the General Body of Equity Jurisprudence, the Laws of the Forty-eight States and Other Collateral Material in an Effort to Impute Standards Where None Have Been Provided by Congress, Only Serves to Emphasize the Deficiencies of the Statute in This Regard.

As we have indicated, appellants do not dispute the proposition that if Congress has failed to prescribe an adequate standard, the Act is unconstitutional in the particular here under discussion, precisely as the lower court held when it said, with reference to Section 5(d):

> "It makes no attempt to lay down rules for the guidance of the board, nor does it state in what circumstances or under what conditions the board is to merge institutions or appoint a conservator or receiver. It establishes no criterion to govern the board's course. It does not require any finding by the board as a condition of its action. No policy is declared by Congress as to merger, or appointment of conservator. The section gives to the Board unlimited authority to formulate rules for the board's action in the respects mentioned and to do so as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to govern itself. We are unable to find in the Act a declaration of policy or standard of action which can be deemed to relate to the subject of section 5(d)." (R. 377.)

We now turn to appellants' attempts to remedy these shortcomings, which attempts only serve to demonstrate that the holding of the three judge court was in consonance with all applicable authorities. See *Panama Refining Co. v. Ryan*, 293 U. S. 388; *Schechter Corp. v. United*

States, 295 U. S. 495. Compare *Yakus v. United States*, 321 U. S. 414, 423, where the court declared that Congress had laid down standards governing the *occasion* for the exercise of the power there involved. And, to the same effect, see *Bowles v. Willingham*, 321 U. S. 503.

I. Dictionary Definitions of "Conservator" and "Receiver."

It is said (wholly without citation of authority) that the occasions on which such an official may be appointed are "already inferable" from the terms by which Congress has described him: "receiver" and "conservator." And recourse is had both to Webster and to the Oxford English Dictionary to establish the conventional meanings of the words. Just how this throws any light on the congressional intent as to the *occasion* or *occasions* on the occurrence of which the Administrator should be empowered to appoint such an official, is not made clear. The *assumption* is, say appellants, "that the object of the conservation is unable to perform the functions of self-preservation."

We are not, however, dealing with assumptions. Congress has either laid down a standard as to when the power to appoint should be exercised or it has not. And we know of no theory, either in reason or in law, which would justify the use of a mere title as affording a clue as to when or under what conditions the power summarily to seize and administer the property of another should be exercised, for the power to appoint and the power to seize necessarily go hand in hand.

We freely concede that recourse may be had to the dictionary to resolve an ambiguity as to the *meaning* of a

word in a statute. But there is here no dispute as to the *meaning* of these words.

The plain fact is that the mere use of the terms in question affords no evidence whatever as to any congressional intent as to when or under what conditions the power in question should be exercised. The point is, to say the least, bizarre; which no doubt accounts for the fact that appellants are unable to cite any authorities in support of their hypothesis of legislation by "assumption."

We therefore submit that it is entirely unwarranted to *assume*, as appellants (Br. pp. 63-64) ask we assume, that when Congress *summarily* authorized the Federal Home Loan Bank Board to establish rules and regulations for the appointment of a conservator, that it had anything whatever specifically in mind as to the occasion for such appointment.

2. Equity Receivership Doctrines.

"A second source of direction for the Bank Administration in appointing conservators and receivers," we are told (Br. p. 66), "is found in the large body of judicial doctrine, substantially non-statutory in origin, developed by the courts." And it is said that the statute "implicitly refers" the administrator to this "well-developed body of common-law doctrine."

This, with all respect, is another remarkable thesis. Because of the very shortcomings of the statute in the particular under discussion, if we understand appellants aright, the Bank Administration is compelled to look for its guide not to the statute, which it is here confessed

furnishes no guide, but to the body of the general law. Under no other theory could it be said that the statute *implicitly* refers the administrator elsewhere.

The answer is, of course, that the standard or guide must be found in the act itself, either in so many words or by *reasonable* implication. *Panama Refining Co. v. Ryan, supra,* and particularly Mr. Justice Cardozo's dissenting opinion at 293 U. S. 435.

As opposed to this, appellants necessarily contend that Congress intended to vest in the Administrator the power summarily to seize the property of others in any case where he could, after commendable and diligent research, locate a decision favorable to his contentions in either the Federal jurisdiction or in any of the forty-eight states. This, with all respect, is an impossible concept and one which but further emphasizes the shortcomings of the statute.

Reference to the Federal Trade Commission in this connection is wholly inapt. The Federal Trade Commission is a quasi-judicial body, *Federal Trade Commission v. R. F. Keppel & Bros., Inc.*, 291 U. S. 304, and in any event the ultimate meaning of the term "unfair methods of competition" rests with the *courts. Federal Trade Commission v. Gratz*, 253 U. S. 421.

The assertion is also made that no question of the delegation of legislative power would arise if the statute had provided for application to a court for the appointment of a conservator or receiver. So stated, the assertion is

correct, for the court would be exercising its traditional judicial powers. In addition to this, such a hypothetical statute would afford an adequate standard for the appointment, namely, a finding by a tribunal qualified to make it, as to facts warranting such action.

Perhaps the best answer to appellants' present contention, however, is that Congress could have had no such intention as appellants postulate in this regard for the simple reason that to turn the Administrator adrift among the court decisions of 49 jurisdictions would have been palpably unworkable and, hence, a legislative impossibility. And the same is true of appellants' next suggestion along this line.

3. State Statutes and Rules.

It is next said that the effect of the direction in Section 5 (a) that, in formulating its rules, "primary consideration" is to be given by the Bank Administration to the best practices of local mutual thrift and home-financing institutions in the United States" is *expressly to refer the Administrator to the statutes and rules of the forty-eight states governing such institutions.* Just how this reference to the "best practices" of the local institutions is metamorphosed into a congressional intention to adopt the state laws *governing* those institutions (and as such, amendable with every session of the forty-eight legislatures) is not made clear.

However, and in order to meet appellants on their own ground, let us see where this contention leads us. In the

first place, and from the standpoint of plain workability, the Administrator, in ascertaining these multiple statutory guides, would be plunged into a morass similar to that envisaged in his familiarizing himself with the court decisions of the forty-eight states. In the second place, and from the standpoint of an ascertainable and reasonably definite standard for everyone, just what state rules or statutes would he adopt? *All* of them? And if so, in case of a conflict, which would he adopt, the more stringent or the less? A conglomeration of some from some states and some from the others? And if so, which from which? Only the state rules which are uniform? And if so, are there any, and, if so, what are they?

The best that appellants can do along this line is to say that a "general consensus" exists, and at pp. 69-70 they list an agglomeration of state grounds for take-overs. In so doing, they accurately measure the deficiencies in this regard of their own statute. *Every state statute which they cite or to which they refer sets up specific standards and prescribes the grounds for which and the occasions upon which the local institutions may be taken over* by state authorities. A comparison of these state enactments with the Home Owners' Loan Act affords the most eloquent argument which can be made in support of appellees' contentions here. The states have not left the matter to inference and argument. A state institution knows that certain occurrences will render it liable to seizure. A federal institution, on the other hand, is left

at the mercy of the uncontrolled discretion of the Bank Administration, for the simple reason that the Administration itself has been supplied with no guide by Congress.

On the other hand, if, as appellants argue, the intent was to permit the Administration to follow state legislation, again we ask, that of which states? Congress has given no indication. Admittedly the Administration has picked and chosen from the various state procedures as its uncontrolled fancy dictated, for it is said that its list conforms "very closely" to the provisions of "at least" the New York, California, Indiana and Massachusetts statutes. (Br. p. 72.)

Why these, and why the "very closely" and why the "at least"? Why not Texas or Illinois or New Jersey or Ohio or Pennsylvania, to name a few? If the state patterns were those prescribed by Congress, why not conform exactly to whatever pattern Congress had in mind, and eliminate the "very closely" and the "at least"?

The answer is, of course, that Congress *had* no pattern in mind and the Administration was compelled, willy-nilly, to set up its own. Whether it is good or bad is beside the point; *it was not authorized by Congress.*

We next turn to a discussion of appellants' views as to possible standards from the standpoint of the Act itself and other federal statutes assertedly applicable.

B. A Comparison of Section 5(d) With Kindred Enactments of Congress Likewise Emphasizes the Deficiencies of the Section in So Far as Any Standard Is Concerned.

It is pointed out by appellants that Section 5(d) should not be tested in isolation, but rather with reference to the statutory context in which it appears, a proposition which is, of course, not disputed. There is no question but what the Act as a whole sets forth, save for the particular under discussion, a comprehensive plan for the organization and governance of federal savings and loan associations; a fact which but renders the failure to set a standard for the occasion of the appointment of a conservator or receiver only the more glaringly apparent. The result is that recourse to the rest of the Act is of no avail to supply the deficiency in Section 5(d).

Reference is made, among other things, to the already discussed provision in Section 5(a) with reference to giving primary consideration to the best practices of local thrift institutions. This is treated as a "general guide" (Br. p. 74) but appellants have heretofore pointed out (and they again point it out at p. 76) that the effect of this provision is to permit the Administration to take cognizance of the laws of some or all or a few of the forty-eight states, rather than setting up a standard in the Act itself. Other "general guides" are suggested, dealing with such matters as good character as to charter applicants, necessity for the creation of the institution and reasonable probability of its success. What these matters have to do with a standard for the appointment of conservators and summary seizures of going concerns is not made to appear.

Appellants point out the eligibility requirements of the Federal Home Loan Bank Act and of the Federal Sav-

ings and Loan Insurance Corporation and conclude that "regard" is to be had, in the appointment of a conservator, to these provisions (as well, we assume, as to the dictionary, to the body of general equity jurisprudence and to the laws of the forty-eight states and the District of Columbia). It is very well to give "regard" to these matters, we suppose, but where is any definite standard afforded by which a federal association may know whether or not it faces seizure?

The plain fact is that appellants' argument proves too much. If, in formulating his rules for the appointment of conservators and receivers, the Administrator is at liberty to pick and choose from the entire field of Federal statutes, state statutes and the judicial decisions of all of the American jurisdictions, it is the Bank Administration and not Congress, which is doing the law-making; which is precisely what the three judge court held.

Appellants mention other Federal statutes where seizures by sundry officials are provided for. Without exception, they deal with *seizures for cause, and the causes are specified*, again making the deficiencies of the present act, and particularly Section 5(d), more manifest.

Thus, Section 203 of the Bank Conservation Act, 12 U. S. C. §203, provides for the appointment of a conservator *whenever the Comptroller shall deem it necessary to conserve the assets of any national bank for the benefit of its depositors and other creditors;* the Banking Act of 1933, 12 U. S. C. §71a; authorizes the Comptroller to appoint a conservator *whenever any national bank or Federal Reserve member bank violates the requirement that such institutions have from five to twenty-five directors;* and the National Housing Act, 12 U. S. C. §1729, em-

powers the Federal Savings and Loan Insurance Corporation to act as conservator or receiver *whenever any savings and loan association shall be in default.*

Even more significant, however, is the parent statute of all, the National Banking Act, 12 U. S. C. §21 *et seq.*, which provides at 12 U. S. C. §191 for the appointment of a receiver *whenever* (a) a national bank shall be dissolved or its charter forfeited, (b) a judgment against it shall be unsatisfied for thirty days, or (c) the Comptroller becomes satisfied of its insolvency. And §192 provides for a similar appointment *whenever* the Comptroller is satisfied that any national bank is in default on its circulating notes.

It is submitted that the comparison of these statutes with the Home Owners' Loan Act inevitably compels the conclusion that the latter sets up no standard at all in the particular under discussion. Precisely as was the case with the state statutes earlier under consideration, with their definite standards for administrative seizures, so here the Federal statutes to which we have referred lay down precise guides both for the administrative official involved and for the institution subject to the exercise of the power. The Home Owners' Loan Act, however, leaves the Bank Administration free to select its own standards, as appellants not only confess but actually argue, from such sources as it may select at random, state or federal, legislative or judicial. To paraphrase the excellently chosen words of Mr. Justice Cardozo in *Panama Refining Co. v. Ryan*, 293 U. S. at p. 434, the Bank Administration may "roam at will, picking and choosing as it pleases." The statute is, therefore, plainly defective.

V.

The District Court Did Not Err in Entering Final Judgment.

Appellants complain bitterly of the entry of final judgment at what they contend was a preliminary stage of the action. Since this point is urged as a separate ground of reversal, it must be evaluated from the premise that the District Court's holding as to the constitutional question was correct, but that procedurally the court erred in entering a final judgment as distinguished from merely ruling on the preliminary matters before it.

In order to establish error, and above all prejudicial or reversible error, it is, of course, necessary that appellants show that the procedure adopted by the court deprived them of some substantial right. As to this, they assert that they were deprived of their right to answer and of their right to a trial on the facts.* And this, in turn, depends upon what their defenses were as against the claim of unconstitutionality which was upheld by the court, for if there were no material issues of fact to be tried, appellants, naturally, could not have been prejudiced by the entry of a final decree on questions of law alone.

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*As to this, the record shows that Ammann filed an answer to the complaint on October 21, 1946, subsequent to entry of the decree and without waiving the questions presented on his appeal. [R. 523.] Fahey filed no answer, apparently electing to stand upon his motion to quash.

A. Entry of a Final Judgment Without a Trial Is Warranted Where There Are No Material Issues of Fact to Be Tried.

So far as appellants' substantive rights are concerned, the result of the court's action here was precisely the same as it had granted a motion of plaintiffs for judgment on the pleadings or had granted a motion of plaintiffs for summary judgment. Compare Rule Civil Procedure 56(c). A party, be he plaintiff or defendant, has no valid cause for objection if a court renders judgment against him without a trial on the ground, either that his complaint is insufficient, on the one hand, or his answer fails to state a defense, on the other. And this proposition applies as well to injunction cases as to any others. *Allegheny Oil Co. v. Snyder, Gillmor v. Brown*, 6 Cir., 106 Fed. 764 (on motion to dissolve injunction, same made perpetual without trial); *Coty v. Prestonettes*, 2 Cir., 285 Fed. 501, reversed on other grounds, 264 U. S. 359 (preliminary injunction, denied by trial court, made perpetual by Circuit Court of Appeals); *Richardson v. Blalock*, 118 S. C. 438, 110 S. E. 678 (final judgment on application for temporary injunction).

The question would then seem to be whether the pleadings of defendants raised any material issue of fact as against the basic holding of unconstitutionality. nd in this connection it is not amiss to point out that the two decisions cited by appellants as to this phase of the case have nothing to do with the problem. *In re Sanford Fork & Tool Co.*, 160 U. S. 247, simply held that where a judgment for plaintiffs on exceptions sustained to an answer was reversed, the case was set at large and the defendants were not, *ipso facto*, entitled to a judgment against the plaintiff. *William J. Friday & Co., Inc. v.*

United States, 3 Cir., 61 F. (2d) 370, is to the same effect. There a demurrer to the complaint had been sustained and, plaintiff electing to stand, judgment was entered for defendants. On appeal, which resulted in a reversal and remand, it was unavailingly contended that judgment should have been entered for plaintiff on the demurrer *to his own complaint*. Neither case detracts from the proposition that where a pleading tenders no material issue of fact, judgment for the other party without a trial is proper.

1. Since It Was Conceded That the Assets of the Long Beach Association Were Seized Under the Purported Authority of Section 5(d) of the Home Owners' Loan Act, the Responsive Pleadings of Defendants Raised and Could Have Raised No Material Issue of Fact in View of the Holding of Unconstitutionality.

It is not disputed by anyone that the assets of the Long Beach Association were seized under the purported authority of Section 5(d). This was the basic premise of the argument of both sides below. In view of this fact, with the holding of unconstitutionality rendering the defendants *trespassers ab initio*, were there any defenses on the facts available to them and, if so, since the burden of overthrowing the judgment for error is on appellants, does the record show what they were?

Appellant Fahey offers no obstacle in this regard, for he filed no answer and has hence made no showing of any sort that he had any defenses on the facts. We have no objection to assuming, however, that his defenses on the merits would have been the same as those of Ammann.

Ammann's answer pleaded four defenses. The first alleged the insufficiency of the complaint, a defense in law

held insufficient by the denial of his motion to dismiss. The second defense, while containing formal denials with reference to the allegations of the complaint, nevertheless admitted [R. 524] that on May 20, 1946, he appeared at the offices of the Long Beach Association and announced his appointment as conservator; and, as we have pointed out, it was in any event conceded throughout the proceedings below that he had seized the assets under purported authority of Section 5(d). The holding of unconstitutionality, therefore, operated to deprive him of any defense as against the charge in the complaint of an illegal seizure. His third defense set up estoppel as a defense; the same point that we have earlier answered herein by showing that there could have been no estoppel to attack the constitutional validity of a severable portion of the statute. The fourth defense set up the same failure to pursue administrative remedies which, as we have earlier pointed out, the Long Beach Association was not called upon to pursue for three different reasons.

It thus follows that if this Court agrees with the contentions of appellees on (1) the constitutional point (2) the estoppel point and (3) the administrative remedy point, the action of the court below in ordering final judgment did not operate to deprive appellants of any substantial rights whatever. Under such a holding, it would follow that the Ammann answer did not state a defense, since it raised no material issue of fact. Indeed, under the circumstances we know of no defenses which *could* have been raised; and certainly the brief of appellants has pointed to none. Such being the case, the entry of final judgment was proper.

VI.

The Third Party Complaint Against the Federal Home Loan Banks, Including This Appellee, Was Properly Allowed.

This appellee was brought into the case through the medium of a third party complaint filed by the Long Beach Association against this appellee, the Federal Home Loan Bank of Portland, and the so-called Federal Home Loan Bank of San Francisco. [R. 222.] The third party complaint prayed, in substance, that the court determine and declare the status of the Long Beach Association as a stockholder of this appellee and also determine which of the banks in question held assets of the Long Beach Association deposited with this appellee prior to March 29, 1946. It was upon this date that this appellee by means and practices remarkably similar to those employed in the seizure of the Long Beach Association, was summarily seized by appellants Fahey and Ammann, and by fiat orders* of the former ostensibly (a) *merged* with the then existing Federal Home Loan Bank of Portland to form a new entity (Federal Home Loan Bank of San Francisco) and (b) *dissolved*, a combined feat of no mean attainment. This appellee appeared and answered the third party complaint [R. 371]; and also filed a cross-claim [R. 346], to enforce legal and equitable claims to obtain possession of, and to remove clouds upon the title to its assets in the value of some $40,000,000 seized as above set forth and by the Home Loan Bank Administration turned over to the ostensible San Francisco Bank. Appellant Fahey was joined as a third party defendant and substituted service was had upon him in the District of Columbia under Judi-

*These documents are set out in full at R. 293-295; 349-351.

cial Code Section 57. [R. 370.] The issues arising under the third party complaint and the above cross-claim have not been tried.

Appellants claim that the filing of the third party complaint in question against the Federal Home Loan Banks should not have been allowed, and they assert in this regard (Br. p. 100) that there is "no connection" between the "merger" of this appellee with "the Federal Home Loan Bank of Portland (hereinafter called Federal Home Loan Bank of San Francisco)." [R. 350.] The record is to the direct contrary, which is alone ample justification for the exercise by the District Court of its discretion in permitting the third party complaint to be filed.

A. Permission to File a Third Party Complaint Is Discretionary, and Under the Facts Here Present There Was No Abuse of Discretion.

It should be borne in mind that the third party complaint did not name either of the appellants herein as third-party defendants, a fact which makes it rather difficult to comprehend why they have any ground of complaint as to the order permitting its filing.

Aside from this, it is not open to dispute that the District Court has a wide range of discretion with reference to the granting or withholding of leave to file third party complaints, *Reed v. Hickey*, D. C. Pa., 2 F. R. D. 92; *Falcone v. City of New York*, D. C. N. Y., 2 F. R. D. 87, and the question here is, therefore, whether or not the District Court abused its discretion under the circumstances revealed by the record. It is submitted that it did not.

As against the claim of appellants that there is no connection between the seizures of this appellee by the Home Loan Bank Administration on March 29, 1946, and the seizure of the Long Beach Association on May 20 of the same year, the record reveals facts which lead directly to the opposite conclusion.

From these facts the District Court was amply justified in concluding, at least preliminarily, that both the bank seizure and the Long Beach seizure constituted related attempts by the Bank Administration to retaliate upon the officers and directors of both institutions for their refusal to accept its arbitrary dictates.

The connection between the two seizures is perhaps best epitomized in the verified cross-complaint of the Long Beach Association, which sets forth the following facts:

Prior to March 24, 1946, the Federal Home Loan Bank of Los Angeles was one of the twelve of such banks existing throughout the United States with offices at Los Angeles, California. On November 23, 1944, the then president of the Los Angeles Bank ,one M. M. Hurford, had died. T. A. Gregory, president of the Long Beach Federal Savings and Loan Association, was also one of the members of the board of directors of the Los Angeles Bank. Subsequent to Hurford's death, one C. E. Berry, vice president of the Los Angeles Bank and who had served that institution since 1934, was elected president of the Bank by its board of directors. Under the Federal Home Loan Bank Act the approval of defendant and appellant Fahey, as Commissioner of the Federal Home Loan Bank Administration, is required before a president elected by the directors of any Federal Home Loan Bank can take office. Various disputes and controversies as to such suc-

cession then arose between Fahey and the directors of the Los Angeles Bank. Berry was three times elected president by the directors, and such action was unanimously confirmed by all of the stockholders of the Bank, but each time Fahey refused to approve such election and refused to give any reasons therefor. T. A. Gregory of the Long Beach Federal Savings and Loan Association, in addition to being a director of the Los Angeles Bank, was also a member of various committees which had been appointed from the stockholders of the Los Angeles Bank and from the various loan associations throughout the State of California. As such member, Gregory was in active and frequent contact with Fahey in connection with the Los Angeles Home Loan Bank matter. Ultimately, Fahey, unable to dictate to the directors of the Los Angeles Bank as to the matter of the succession to the office of president, on March 29, 1946, and with the assistance of defendant and appellant Ammann, unlawfully and arbitrarily seized all of the assets, securities, affairs and business of the Los Angeles Federal Home Loan Bank, which at the time of such seizure had assets in excess of $43,000,000. On the same day Fahey and Ammann attempted and purported to merge the Los Angeles Home Loan Bank into the Federal Home Loan Bank of Portland, having assets of about $9,000,000, and named the bank thus seized and ostensibly merged Federal Home Loan Bank of San Francisco. By said seizure and purported merger, Fahey and Ammann claimed to have terminated the existence of the Federal Home Loan Bank of Los Angeles and purportedly discharged all of its then officers and directors. At the time of said seizure, Long Beach Federal Savings and Loan Association owned stock of the face value of $360,-

000 and owned a proportion of the undivided surplus of said Bank of approximately $40,000.*

Subsequent to the seizure of the Los Angeles Bank, a committee of its stockholders was formed, and T. A. Gregory became one of the members of such committee. One of the purposes of this committee was that of raising funds from the stockholders of the seized Los Angeles Home Loan Bank for the purpose of instituting legal action against Fahey and Ammann for their unlawful and arbitrarily destructive acts in connection with the Federal Home Loan Bank of Los Angeles. In addition to this, Gregory was active for many months in Washington, D. C. in seeking a congressional investigation of the acts of the defendants Fahey and Ammann in their seizure and general conduct of the Los Angeles Bank matter. The efforts to secure a congressional hearing were successful, and a date was set for such hearing. These matters were all known to Fahey and Ammann, and in an effort to prevent Gregory from testifying at such congressional hearing and for the purpose of intimidating all other Federal Savings and Loan Associations throughout Southern California and to prevent the bringing of a suit in the Federal courts concerning the seizure of the Los Angeles Bank, and as a calculated step to destroy the Long Beach Association, Fahey and Ammann then and on May 20, 1946, unlawfully and wrongfully seized the Long Beach Federal Savings and Loan Association. [R. 207-210.]

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*In addition, Long Beach Federal Savings and Loan Association had in excess of $8,000,000 in United States bearer bonds on deposit in the Federal Home Loan Bank of Los Angeles at the date of the seizure of the latter. [R. 8.]

One of the main purposes of the third party practice is, of course, to eliminate circuity of action. The effect of the facts we have just set forth was to charge Fahey and Ammann with nothing more nor less than a conspiracy to wreck, not one, but two substantial financial institutions. One would assume that it would be their own preference to disprove these charges, if they could, in one plenary action; but, be that as it may, the District Court was, under the circumstances, amply justified in exercising its discretion in granting leave for the Long Beach Association to ascertain just what its status presently is as a stockholder and depositor-member of this appellee, on the one hand or of the ostensible Home Loan Bank of San Francisco neé Portland, on the other. The District Court, therefore, did not err in granting leave to file the third party complaint; and, as we have pointed out above, it is difficult to perceive in any event how either of the appellants were prejudiced thereby, since they were not named as parties therein.

For the reasons hereinabove given, it is respectfully urged that the judgment appealed from should be affirmed.

LOUIS W. MYERS,
PIERCE WORKS,
RICHARD FITZPATRICK,
Attorneys for Appellee Federal Home Loan Bank of Los Angeles.

O'MELVENY & MYERS,
JOHN WHYTE,
HOWARD J. DEARDS,
Of Counsel.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 687

JOHN H. FAHEY and A. V. AMMANN, Individually and Respectively as FEDERAL HOME LOAN BANK COMMISSIONER and CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,

Appellant,

vs.

PAUL MALLONEE, G. H. NEWHOUSE, WINNIE BUCKINN, *et al.*,

Appellees.

Brief of the Attorney General of California, as Amicus Curiae, in Support of Appellees.

FRED N. HOWSER,
Attorney General of the State of California,

EVERETT W. MATTOON,
Deputy Attorney General of the State of California,
600 State Building, Los Angeles 12, California,
Amici Curiae.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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Textbooks

19 Savings and Loan Journal, No. 5 (May 1946) 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 687

JOHN H. FAHEY and A. V. AMMANN, Individually and Respectively as FEDERAL HOME LOAN BANK COMMISSIONER and CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,

Appellant,

vs.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, *et al.*,

Appellees.

Brief of the Attorney General of California, as Amicus Curiae, in Support of Appellees.

Opinion Below.

The opinion of the District Court of the United States for the Southern District of California [R. 374-378] is reported in 68 Fed. Supp. 418.

Jurisdiction.

The judgment of the district court was ordered on September 30, 1946 [R. 490-500]. The petition for appeal was presented on October 2, 1946 [R. 506-507] and allowed on October 3, 1946 [R. 511-512]. The case was docketed in this Court on November 9, 1946. On December 9, 1946, this Court noted probable jurisdiction of the

case [R. 766]. The jurisdiction of this Court rests upon Sections 2 and 3 of the Act of August 24, 1937, Ch. 754, 50 Stat. 751, 28 U. S. C. 349a, 380a.

Questions Presented.

1. Whether Section 5, and particularly Section 5(d), of the Home Owners' Loan Act is invalid as transgressing Article 1, Section 1, and Article I, Section 8, Paragraph 18, of the Federal Constitution by reason of its failure to define reasonably definite standards and its invalid attempt to delegate legislative power.

2. Whether Section 5, and particularly Section 5(d), of the Home Owners' Loan Act is violative of the Fifth Amendment to the Federal Constitution by reason of its denial of due process of law.*

Prefatory Statement.

This brief is filed by the Attorney General of the State of California, as an *amicus curiae*, in support of the conclusions reached by the three judge statutory court which considered the issues herein and rendered judgment for the appellees. It is the considered opinion of this *amicus curiae* that the issues involved are impressed with such importance to the public interest as to warrant the filing of

*Additional questions are presented in the briefs of appellants and appellees, *viz.*: (a) whether the Association and its shareholders are estopped, (b) whether they were required to first exhaust the administrative remedies, (c) whether the defendant Fahey was an indispensable party and his presence was necessary to a determination of the constitutional questions, and (d) whether there was any error in the entering of final judgment by the district court.

These questions have been discussed in the briefs of the parties to the action and will be adverted to only incidentally by the *amicus curiae* herein.

a brief expressing doubt as to the constitutionality of the legislative measures employed by the agencies in question to implement the action taken, which action has occasioned confusion and alarm of such proportions as to indicate the need for judicial repudiation of the asserted powers and restraint of their exercise in this and other instances, until such time as such powers are validly invested.

We deem it neither helpful to constructive judicial consideration and correction of the serious abuses which have taken place, nor within the bounds of propriety, for us to join in the expression of amazement and resentment which has issued from individual minds as a result of what they consider to be an autocratic and vindictive course of action, one utterly foreign and repulsive to their basic concept of the principles upon which our democratic government rests. However revolting the course pursued with such disastrous effect, under the cloak of claimed legislative authorization, may be to the individual, our office is to address temperate and searching inquiry as to its validity. It is our belief that whether the practices employed involve an invalid assumption of non-existing powers claimed by those asserting them to flow from legislative enactment, or whether the legislation itself does purport, as claimed, to endow this agency with the powers exercised, the result is the same. We think that in either case the limits upon constitutional action have been transgressed.

What we *do* express, and seek to emphasize, is the widespread concern, the genuine alarm, occasioned by the situation resulting from the practices which have been engaged in, a situation deemed by us both unwholesome and men-

acing in its relation to public confidence, to sound public economy, and to the general weal.

We think it may not be gainsaid that considerations involving the savings and the homes of its citizens are the justifiable and cognizable concern of the state. That the maintaining of a sense of safety and security as to these things which so intimately affect domestic tranquillity and the general welfare is highly important to the well-being of the entire social and economic structure of the state, will not, we think, be challenged. Nor should recognition of the penetrating factor of extreme sensitivity which pervades the feeling of people, particularly those of moderate means, where the safety and protection of their savings and homes are at stake, be denied. Uncertainty and fear occasion doubt and confusion, which experience has demonstrated may lead to unrest and panic.

In addition to and apart from its regard for the well-being of those of its citizens who are investors and participants in institutions of Federal creation and control, the state has a very direct interest in the protection of those who have entrusted their earnings and their security to like institutions chartered and regulated under its own laws.

It has been held by this Court that legislation in this field lies within the province of the states and that the power of Congress is, at most, concurrent. (*Hopkins Federal Savings & Loan Association v. Cleary*, 296 U. S. 315.) In fact, in the *Hopkins* case, which involved the

meaning and validity of an Act of Congress whereby building and loan associations organized under the laws of a state might be converted into Federal Savings and Loan Associations, it was held:

> "The Home Owners Loan Act, to the extent that it permits the conversion of state associations into federal ones in contravention of the laws of the place of their creation, is an unconstitutional encroachment upon the reserved powers of the States. U. S. Constitution, Amendment 10." (296 U. S. at 335.)

It was further held that where by the challenged Act of Congress the associations were being dissolved in other ways and for other causes than those defined in the state statute which created and regulated the state associations:

> "In this there is an invasion of the soverignty or quasi sovereignty of Wisconsin and an impairment of its public policy, which the state is privileged to redress as a suitor in the courts so long as the Tenth Amendment preserves a field of autonomy against federal encroachment" (at p. 337).

In the *Hopkins* case the state was the suitor and this court held that it properly assumed that status. In the case here on appeal the state is not a suitor, nor has it essayed to become such. It does not seek to repulse "an assault upon the quasi public institutions that are the product and embodiment of its statutes and its policy," as there is no assault of such a nature here present. However, we think it neither far-fetched nor presumptive to express the view that there is here present "a matter of grave public concern in which the state, as the representative of the public, has an interest apart from that of the individuals affected." It is with this thought that this

amicus curiae, without asserting any claim of right for the state to bring suit in the premises, feels the responsibility of pointing out the dangers to which a sanction as to the constitutionality of the official acts engaged in would directly contribute.

While the legality of the merger of the Federal Home Loan Bank of Los Angeles, with assets of $43,000,000.00, with a Portland bank, and the immediately subsequent merger of both banks with a bank in San Francisco, is not a direct issue in this appeal, it is of cognate importance and significance—as it was made without notice or hearing of any character; none, in fact, being required by the statute under which this was attempted [R. 377; 68 Fed. Supp. 418, 420].

Illustrating the interest of the state which inevitably results from this act we submit the following data as to participation by State Chartered Associations in the Federal Home Loan Bank of Los Angeles as of March 29, 1946, the date of its seizure and merger:

> There were 74 Federal Savings and Loan Associations, owning 38,775 shares in the bank, of a value of $3,877,500.00. This constituted a percentage of 65% of the stock. The total assets owned were $386,601,769.00 and the total number of investors was 176,075.
>
> There were 88 State Chartered Associations, having 20,885 shares of a value of $2,088,500.00, constituting 35%. The total assets were $272,756,998.00 and the total number of investors 126,932.*

*The Savings and Loan Journal, Vol. XIX, No. 5; May 1946

It is thus obvious that numerous institutions of substantial proportions chartered by the state are intimately concerned in the administration of the Federal Home Loan Bank and that the state has a direct interest in the acts of the Federal Home Loan Bank administration by reason of the fact that these state chartered associations are shareholders therein and rely upon its facilities as a rediscount corporation for loans required to finance the construction of thousands of homes—this interest of the state being additional to that which it holds for sound and healthy public economies generally, which embraces the well being and safety of all those served by federal institutions and all who, in turn, cannot escape being affected by the over-all status of public confidence and trust.

That, without notice or hearing and within the compass of one day, the Federal Home Loan Bank of Los Angeles could be merged with that of Portland and the resulting bank then merged with a simultaneously created bank of San Francisco, and a new district set up, occasioned uncertainty and alarm does not excite our wonder.

That great confusion and consternation resulted from the seizure of the Long Beach Federal Savings and Loan Association (here directly concerned) by reason of the tangling and clouding of titles to thousands of homes excites no greater wonder.

These and other considerations set forth in the briefs of appellees, including the challenge by appellants of the jurisdiction of the United States District Courts as a forum within which the legal rights involved may be ascertained, have impelled us to question the validity of the acts which have precipitated the existing situation, regarded by us as seriously unwholesome and not free from dangerous consequence.

The Congressional Investigation.

It may be considered proper at this stage for reference to be made to the fact that on or about March 1, 1946, a complaint was made by the Federal Home Loan Bank of Los Angeles and the Federal Savings and Loan Association of Long Beach against the Federal Home Loan Bank Administration. This complaint was made to the "Select Committee to Investigate Executive Agencies" of the House of Representatives, Seventy-Ninth Congress, Second Session (pursuant to H. Res. 88).

As a result of this complaint hearings were conducted by the Committee, at which the testimony of twenty-three witnesses was taken (comprising 273 pages of printed record) and many exhibits were introduced.*

While it is not suggested that the evidence taken at these hearings fulfills the requirements of evidence in this case, many startling revelations resulted therefrom.

On July 25, 1946, the Committee filed its Report with the Committee of the Whole House on the State of the Union, and it was ordered printed.** The report sets forth an extensive review of the entire situation in respect of both (1) the purported mergers of the Los Angeles Bank with the Portland Bank and then of both with a newly created San Francisco Bank, together with the setting up of a new Federal Home Loan Bank district, all by orders issued on one day (March 29, 1946), and (2)

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*Hearings before the Special Committee to Investigate Executive Agencies, pursuant to H. Res. 88 (1946), Part 7.

**House Report No. 2689, 79th Congress, 2d Session (Union Calendar No. 819.)

This report is included in the Affidavit of Mallonee on file in the U. S. Supreme Court.

the action taken by the Commissioner in appointing a conservator and seizing the Long Beach Federal Savings and Loan Association on the morning of May 20, 1946.

At the close of its 28-page Report the Committee set forth its "Conclusion and its Recommendations." Included in its Recommendations are these: "That the Commissioner take all necessary steps to reestablish a Federal Home Loan Bank of Los Angeles and a Federal Home Loan Bank of Portland, and revoke the order or orders by which the assets of the two districts were intermingled," and "That the Commissioner revoke the order appointing a conservator for the Federal Savings and Loan Association of Long Beach, restore the assets and affairs of the association to its duly elected management, and render a proper accounting for the same . . . ." (The "Conclusion" and "Recommendations" are set forth below in their entirety.)*

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*Report of Select Committee to Investigate Executive Agencies. House Report No. 2659, 79th Congress, 2d Session. (Union Calendar No. 819) pp. 26-28.

CONCLUSION.

The action here complained of was not only a disservice to the Government but also a greater disservice to the people for the protection of whose rights and affairs our Government exists. Should the time come when our Government is incapable of discharging that fundamental function it must cease to exist in the form and for the purpose for which it was founded. The same end is inevitable for any endeavor with which the Government is identified. The necessity for unquestioned rectitude of purpose and sound, just and impartial administration of governmental endeavor is paramount.

The Federal Home Loan Bank System was created to meet a need which the Nation experienced. It is a potential factor in the era which lies ahead of us. The functions of this Government agency loom up as far more important in the future than it has ever been. Unless its administration is elevated to a higher esteem and

Bills to effectuate much of the remedial action recommended by the Committee have been introduced at the present (1st) session of the 80th Congress.

See *H. R. 1623*, by Cecil R. King (D. Cal.), to restore the Eleventh and Twelfth Home Loan Bank districts and to restore the Federal Home Loan Bank of Los Angeles and the Federal Home Loan Bank of Portland, and providing the manner in which districts may be hereafter changed.

H. R. 1697, by Cecil R. King (D. Cal.), to amend Section 5(d) of the Home Owners' Loan Act of 1933 to vest the power of appointment of conservators and receivers of Federal savings and loan associations in the United States District Courts and prescribing the grounds therefor.

See, also, *H. R. 200*.

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undergoes decided improvements, its efficiency will be seriously impaired.

RECOMMENDATIONS.

The recommendations of your committee are—

(1) That the Commisisoner revoke the order reducing the number of districts from 12 to 11 in the Federal Home Loan Bank System.

(2) That the Commissioner take all necessary steps to reestablish a Federal Home Loan Bank of Los Angeles and a Federal Home Loan Bank of Portland, and revoke the order or orders by which the assets of these two district banks were intermingled.

(3) Should the Commissioner, in the light of the evidence adduced before your committee, still adhere to the opinion that the number of districts should be reduced from 12 to 11, and is still of the opinion that he has the legal authority to reduce the number of districts, he should proceed to give due notice of such intention to all of the associations in the area affected, hold hearings, and give due weight to the recommendations of the officials of the banks involved and to the views of the associations which are members of the regional banks affected, and should likewise take

Summary of Argument.

I. Section 5, and particularly Section 5(d) of the Home Owners' Loan Act, is invalid for the reason that the limits of Article I, Section 1, and Article I, Section 8, paragraph 18, of the Constitution of the United States which require reasonably definite standards to be provided, where legislative powers are delegated by Congress, are transgressed. The specific provisions of Section 5(d) are definite and complete in and of themselves upon the subject of merger and liquidation, and are both isolated and insulated from the provisions of other subsections in the context.

II. Due process of law is denied, in violation of the Fifth Amendment, both by reason of the invalid delegation of legislative power and by the failure to provide valid notice and opportunity to be heard.

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into consideration the views of the industry generally. Any sudden and unheralded action, such as that taken in the case of the Los Angeles bank, is certain to have an unfavorable effect on the confidence of the public in the institutions involved.

(4) That the Commissioner revoke the order appointing a conservator for the Federal Savings and Loan Association of Long Beach and restore the assets and affairs of the association to its duly elected management, and render a proper accounting for the same, as expeditiously as is consistent with judicial determination of the questions at issue. Your committee questions whether the law ever contemplated that the Board should have the extraordinary power to seize and appoint a conservator for a solvent institution as a part of the supervisory functions entrusted to the Board over member banks.

(5) That the appropriate committees of Congress give consideration to the necessity (if, in the opinion of such committees, the necessity exists) of amending the Federal Home Loan Act in the following particulars:

(a) Clarifying the authority of the Board in the matter of approval of elective officers of the regional banks to the end that

ARGUMENT.

Introductory.

This *amicus curiae* is primarily interested in the causative factors which brought about the situation resulting in this litigation, for it is this situation and others like it which may occur that are menacing, in an appreciable degree, to the well-being of the people of the state. We address our discussion, accordingly, to the basic inquiry as to whether the practices which were here indulged find sanction in constitutional authorization.

However, we also are of opinion that the judgment of the district court was sound in its entirety, and that the contentions advanced by the appellants relating to questions other than the basic ones as to constitutionality of the Act are untenable. These questions are:

(1) Whether the association and its shareholders are estopped:

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neither the Board nor other officials may exercise such authority arbitrarily.

(*b*) Clarifying the authority of the Board or the Administrator to increase or decrease the number of regional banks, and specifying the condition and procedure under which such changes may be made.

(*c*) Prohibiting the agency from appointing conservators for any member association, except under specific and well-defined limitations.

(6). It developed in the hearings that the order relating to the appointment of a conservator for the Federal Savings and Loan Association of Long Beach had not been filed with the Federal Register, as required by law. The Division of the Federal Register advised your committee that only on three occasions has the Federal Home Loan Bank Administration complied with the requirement that its orders be filed with the Federal Register. Your committee further recommends that the Administrator comply with the law in this respect in the future.

(2) Whether they were required to exhaust administrative remedies before bringing this action;

(3) Whether the defendant Fahey was an indispensable party and his presence was necessary to a determination of the constitutional questions; and

(4) Whether there was any error in the entering of final judgment by the district court.

Each of these questions has been discussed extensively in the briefs of the parties, and it is not our purpose to reargue them here.

(1) It has been shown, as to the question of estoppel, that the fact of incorporation of the Long Beach Association under the Home Owners' Loan Act does not estop it or its shareholders to question the validity of Section 5(d). This is because the Act contains a *separability clause* (Section 9), and the provisions of Section 5(a) setting forth a complete plan for the "organization, incorporation, examination, operation and regulation" for such associations is clearly severable from those of Section 5(d) here in question. It has been pointed out that not only do the authorities hold that estoppel to challenge an unconstitutional provision does not apply to one who accepts the benefits of a statute where the statute contains a severability clause, but further, that it does not apply even in those cases where the statute itself does not contain such a clause,—if the provision is found to be severable.*

* See authorities cited pp. 13-15, Br. of Appellee Federal Home Loan Bank of Los Angeles.

(2) As for appellants' insistence that appellees should have demanded a hearing under Section 206.2 of the Rules and Regulations promulgated under the claimed authority of Section 5(d) of the Act before recourse to the courts was possible, the answer is that the source of the attempted provision for such a hearing was itself void, as determined by the court; and the issue presented by the suit brought was upon the constitutionality of that section of the Act—an issue purely of law. Under these circumstances, and particularly in view of the position of the appellees at the outset—which was one of direct challenge to the constitutionality of the section in question [R. 616, 625] it would have been an idle act to pursue the formalities of a hearing.

(3) The claim of appellants that the defendant Fahey was an indispensable party is refuted by their own disclaimer that he was not such in so far as the constitutional questions were involved [R. 675], as well as by authority.* The contention that Section 57 of the Judicial Code (28 U. S. C. 118) is inapplicable, upon the ground that the main gist of the action does not seek relief *in rem* but seeks *in personam* judgments, is also beside the point, inasmuch as the challenge here was to the existence of any authority whatever to perform the acts attempted. Moreover, it is irrefutable that the gist of the action was the return of the assets.

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*Acker v. Harwood (9 Cir.), 128 F. (2d) 846.

(4) The assertion of error by reason of the district court's entering a final judgment has been shown by the appellees to be not well grounded, for the basic fact upon which the entire case rests is the fact of the seizure,—and it is uncontroverted not only that the seizure was made, but that it was made under the claimed authority of Section 5(d). The question of the constitutionality of this purported authority was thoroughly presented,—and, the court having found it in contravention of the Constitution, all defenses incident to the seizure must needs have been fruitless. The stream cannot rise higher than its source.

While the foregoing subsidiary questions may serve as a sort of smokescreen somewhat obscuring the real target here, penetration to the basic question is not difficult. It is: "Do the provisions of the Act which is the source of the claimed authority for the practices engaged in overstep the bounds of Constitutional limitation?" We address our discussion to this question.

I.

Section 5(d) of the Home Owners' Loan Act Fails to Prescribe Reasonably Definite Standards and Constitutes an Invalid Attempt to Delegate Legislative Power.

Section 5(d) of the Home Owners' Loan Act Act (12 U. S. C., Section 1464(d)) provides as follows:

> "5(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

This is the provision in question. No further mention is to be found in the Act of the "reorganization, consolidation, merger or liquidation" here purported to be authorized.

The Constitution of the United States provides:

> Article I, Section 1. "All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives."

Article 1, Section 8, contains an enumeration of the powers of Congress. The last paragraph of this section invests Congress with the following authority:

> "18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all others powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

While there has been divergence of opinion as to the application of these basic provisions to varying types of legislation, there appears to be general agreement with the statement of Mr. Chief Justice Hughes in *Panama Refining Co. v. Ryan*, 293 U. S. 388, at page 421:

> "The Congress manifestly is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested."

After reviewing this Court's decisions upon this subject from *The Aurora v. United States* (1813), 7 Cranch 382, 3 L. Ed. 378, to the time of his statement, he concluded (at page 430) with:

> "Thus, in every case in which the question has been raised, the Court has recognized that there are limits of delegation which there is no constitutional authority to transcend."

The expressions employed in that decision have become well known. The necessity for Congress to "furnish a declaration of policy," to "set up a standard of action," to "outline the circumstances or conditions" under which action may be taken, has been plainly announced.

The difficulty in these cases is not so much in determining what Congress *may do*, but in ascertaining what it *has done*,—or attempted to do. It is thus that varying results occur in the application of the quite definitely established rule to different enactments.

The district court in this case subjected the Act in question to careful analysis and tested it by the established rules. It was unable to find in the Act any declaration

of policy or standard of action relating to the subject treated in Section 5(d), and as to that section it found:

> "It makes no attempt to lay down rules for the guidance of the board, nor does it state in what circumstances or under what conditions the board is to merge institutions or appoint a conservator or receiver. It establishes no criterion to govern the board's course. It does not require any finding by the board as a condition of its action. No policy is declared by Congress as to merger or appointment of conservator. The section gives to the board unlimited authority to formulate rules for the board's action in the respects mentioned and to do so as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to govern itself. *We are unable to find in the Act a declaration of policy or standard of action which can be deemed to relate to the subject of section 5(d).*" (Emphasis added.) [R. 377.]

Power was simply delegated to the Board to provide for reorganization, consolidation, merger or liquidation. The Board was given "full" power to make its own rules and regulations, and to appoint a conservator or a receiver. There are no limitations upon, nor conditions or circumstances requisite to, such action. The rules are not required to provide for notice or hearing. In short, not even a suggestion is made as to what provisions are to be embraced. And there is elsewhere in the entire Section 5 no reference whatsoever to the subject treated in subdivision (d). Subdivision (a) treats of the "organization, incorporation, examination, operation, and regulation" of such associations.

It is not suggested by us that Congress is under any compulsion to prescribe *detailed* rules. As was stated in the recent case, *American Power & Light Co. v. Securities and Exchange Commission*, 91 L. Ed. Adv. 89, at page 99:

> "Necessity therefore fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules; it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency to apply it, and the boundaries of this delegated authority."

We think that these essentials have not been clearly delineated by Congress in this instance. It has instead presented the Board—here the individual commissioner—with something akin to a blank cheque and clothed him with authority to fill it in. The repository of power, *i. e.*, the Congress, is there, and all that is necessary is for the beneficiary to fill in the amount desired and the date. But the power to legislate reposes in the Congress,—and this may not be delegated except within constitutional limits.

These limits or boundaries require a designation by Congress of the circumstances under which an institution of its creation may be destroyed. They call for some enlightenment as to what character the rules and regulations for merger and liquidation may assume. Here we find none. It is as though Congress had said: "When it comes to the merger or liquidation of these associations you may choose your own reasons and have full power to proceed as you wish, without restraint or even admonition from us."

Certainly no claim will be made that in this Act are contained any such express restrictions as those found in *American Power & Light Company v. Securities and*

Exchange Commission, supra, where the Act (in the section itself in question) required the Commission to so act as "to ensure that the corporate structure or continued existence of any company in a particular holding company system does not 'unduly or unnecessarily complicate the structure' or 'unfairly or inequitably distribute voting power among security holders.'" Such provisions were held of themselves to furnish *some* meaning in the *American Power & Light Company* case.

The language of this Court in that case: "But these standards need not be tested in isolation," is recognized as applicable in all cases. It was there held that these standards, implicit from express language of the Act, derive much meaningful content from other sources. The distinction in the instant case is that there is in Section 5(d) no expression of even general guideposts, from which a sense of direction or guarantee of safety may be gathered by reference to external sources. Congress, whether by inadvertence or design—it matters not which—has given the green light for the commissioner to proceed upon a course of his own selection.

We think it not enough to say that the commissioner, who is endowed by Congress with "full" power, may wander at will for suggestion or support for the rules and the courses of action he chooses to prescribe and follow. Appellants turn from the Act and seek to find remedy for the statutory omission in dictionary definitions of words, in "the large body of judicial doctrine," and in various state statutes and rules. While there may be virtue to be found in these things, there exists also much of variance and confusion. The picking and choosing is left to the commissioner. Had Congress had in mind those definitions, those settled decisions regarded as free from un-

certainty, and those selected statutes and rules of states (out of the many) which it was ready to accept as the best established criteria, it would seem reasonable to believe that it would have so indicated. Instead, it endowed the commissioner with "full" power to make his own rules and to exercise his unfettered discretion in performing acts amounting to little less than the destruction of solvent, prosperous institutions.

After reaching out in an attempt to find external aids for the furnishing of implied standards appellants return to the Act, with the claim that they are to be found within its corners (Br. 72). After enunciating subsections (a) to (k) of Section 5 they place their main reliance for this claim upon subsections (a) and (e). In the former, which relates to the organization, incorporation, examination and regulation of the association, it is said that "primary consideration is to be given to the best practices of local mutual thrift and home-financing institutions in the United States." (In subsection (e) it is provided that no charter is to be granted unless there is reasonable probability of its usefulness and success, unless it can be established without undue injury to properly conducted existing institutions. While these subsections may be regarded as expressing laudable purpose and indicating considerations to be minded of in the formation of associations, it is significant to note that *each* specifically relates to the *creation* of the association. Had Congress chosen to impose these conditions or qualifications upon the exercise of the crushing power to merge or to liquidate it would have been a simple matter to have included the terms "reorganization, consolidation, merger or liquidation," as to which unfettered power is conferred in Section 5(d).

in the enumeration of the terms "organization, incorporation, examination, operation and regulation" employed in Section 5(a), to which latter section the application of Section 5(e) is, by its own terms, specifically limited. This Congress did not do. Its intent and the effect of its express provision in Section 5(d) are thereby definitely established. It requires no attenuated refinement of statutory construction to compel this inescapable result. It set up an entirely separate and unrestrained investiture of power in Section 5(d),—one clearly both isolated and insulated from the conditions imposed upon the exercise of the other confered powers. That this was ill-advised, unwise and potentially disastrous is not the question. It was violative of the restraint imposed by the Constitution.

On pages 82 and 83 of their brief appellants cite a number of decisions in which certain phrases employed in the implementing portions of statutes have been held to furnish sufficient standards or guides to afford escape from their being denounced as guilty of an unconstitutional delegation of legislative power. They make no mention in this connection of the recent case of *American Power & Light Company v. Securities and Exchange Commission*, *supra* (Nov. 25, 1946), where adequate standards were found to exist. There the subsection *itself* which was under attack specifically provided that the Commission should act so as "to ensure that the corporate structure or continued existence of any company in a particular holding company system does not 'unduly or unnecessarily complicate the structure' or 'unfairly or inequitably distribute

voting power among security holders.'" While in each of the cases cited by appellants there were phrases employed with reference to the power confined which were held to furnish a standard of action for its exercise, here appellants point to nothing save one word,—that of "conservator." Contrast with this the significant fact of which has been brought to this Court's attention that the *Bank Conservation Act*, 12 U. S. C., Sec. 203, makes specific provision for the appointment of a conservator "whenever the Comptroller shall deem it necesary to conserve the assets of any national bank for the benefit of its depositors and other creditors."

So, likewise, the *Banking Act of 1933*, 12 U. S. C., Sec. 71a, authorizes the Comptroller to appoint a conservator "whenever any national bank or Federal Reserve member bank violates the requirement that such institutions have from five to twenty-five directors." The *National Housing Act*, 12 U. S. C., Sec. 1729, empowers the Federal Savings and Loan Insurance Corporation to act as *conservator* or *receiver* whenever any savings and loan association shall be in default. And the *National Banking Act*, 12 U. S. C., Sec. 191, authorizes the appointment of a receiver whenever

(a) a national bank shall be dissolved or its charter forfeited,

(b) a judgment against it shall be unsatisfied for thirty days, or

(c) the Comptroller becomes satisfied of its insolvency.

These Acts all furnish illustrations of fair and reasonable guides for administrative action. The words "conservator" and "receiver" are employed there, as they are in Section 5(d),—but the authorization or delegation is not rested upon the employment of a naked word. Section 5(d) is barren of any standard of action.

In this *amicus curiae* brief we have refrained from extensive citation of authorities. The cases on the subject of delegation of power may be said to be legion. The three judge statutory court below bottomed its decision upon two outstanding landmarks in which the basic principles are clearly enunciated.

Panama Refining Co. v. Ryan, 293 U. S. 388;

Schechter Poultry Corp. v. U. S., 295 U. S. 495.

In the first of these two cases Mr. Chief Justice Hughes traced the development of decision in this field from *The Aurora v. U. S., supra* (1813), down to the date of the opinion in the "hot oil" case. In the second he reaffirmed what had been written into the *Panama Refining Co.* case. "The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is vested." Mr. Justice Cardozo in his concurring opinion described the delegated power in that case as "unconfined and vagrant."

To the decisions cited by the three judge court below as supporting its judgment in this case might be added:

Carter v. Carter Coal Co., 298 U. S. 238;

Morgan v. U. S., 304 U. S. 1;

Butler v. U. S., 297 U. S. 1;

Ohio Valley Water Co. v. Ben Avon Burrough, 253 U. S. 287;

Wichita Railroad & Light Co. v. Public Utilities Comm., 260 U. S. 48;

Coe v. Armour Fertilizer Works, 237 U. S. 413,

and numerous others.

In the briefs filed by the appellees are collected and collated many decisions of importance and assistance on this question. No need appears for a duplication of those here.

The problem always has been and it is likely that it will continue to be one of examining critically each venture into the field of legislative experimentation with a purpose to discover whether, if sanctioned, its effect upon our basic charter would be a corrosive one.

We cannot escape the conviction that in this case there has been an attempt at unrestrained delegation, one fraught with dangers which eventualities have demonstrated are far from fanciful.

This Court, while recognizing that Congress is not denied "the necessary resources of flexibility and practicality which will enable it to perform its function in laying down policies and making standards," has held:

> "But the constant recognition of the necessity and validity of such provisions and the wide range of administrative authority which has been developed by means of them *cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.*" (Emphasis added.)

Panama Refining Co. v. Ryan, supra, at p. 421.

II.

Section 5, and Particularly Section 5(d) of the Home Owners' Loan Act Is Violative of the Fifth Amendment to the Federal Constitution by Reason of Its Denial of Due Process of Law.

The Fifth Amendment to the Constitution of the United States provides (Section 1) that no person shall be deprived of his life, liberty or property without due process of law.

While the unlawful delegation of legislative power discussed under Point I herein constitutes a violation of this Amendment, as well as of Article I, Section 1, and Article I, Section 8, paragraph 18, these are additional respects in which due process is here denied.

Mr. Justice Field, in the case of *Pennoyer v. Neff*, 95 U. S. 714, 733, defines "due process of law" to

> "mean a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is by the law of its creation—to pass upon the subject matter of the suit."

One of the rights vouchsafed by the due process guarantee is that of an opportunity to be heard. This has been characterized as a "rudimentary requirement of fair play." In *Morgan v. U. S.*, 304 U. S. 158, which involved the validity of an order of the Secretary of Agriculture fixing rates to be charged by stockyards, in which the

validity of the Act of Congress was also involved, this Court had the following to say:

> "On this appeal, plaintiffs again contend (1) that the secretary's order was made without the hearing required by the statute, and (2) that the order was arbitrary and unsupported by substantial evidence.
>
> "The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administration regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principle that *the legislature* shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand a 'fair and open hearing'—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as 'inexorable safeguard.' St. Joseph Stock Yards Co. v. U. S., 298 U. S. 38, 73, 80 L. Ed. 1033, 1052, 56 S. Ct. 720; Ohio Bell Telephone Co. v. Public Ut. Comm., 301 U. S. 292, 304, 305, 81 L. Ed. 1093, 1101, 1102, 57 S. Ct. 724; Railroad Commission v. Pac. Gas and Electric Co., 302 U. S. 388, 393, *ante*, 319, 58 S. Ct. 334; Morgan v. U. S., 298 U. S. 468, 80 L. Ed. 1288, 56 S. Ct. 906, *supra*. And in equipping the Secretary of Agriculture with extraordinary powers under the Packers and Stockyards Act, the Congress explicitly recognized and emphasized this requirement by making his action depend upon a 'full hearing.'"

Let us inquire as to what, if any, provision is made in the Home Owners' Loan Act for a hearing. The statement is made in appellants' brief (p. 88) that "Section 5(d) clearly authorizes the Bank Administration to provide in its rules and regulations for a hearing.". The fact is that Section 5(d) is totally devoid of even mention of a hearing. If appellants' meaning is that the Board was given a blanket order, without suggestion as to anything whatever which was to be incorporated in the rules and regulations which it was given "full power" to adopt, the statement may be taken as a correct one. But the language of Section 5(d) is totally silent on this subject, as is that of the other sections.

However, appellants point to Section 206.2 of the Rules and Regulations promulgated by the Commissioner for Federal Savings and Loan Associations (8 Federal Register 1180) as affording valid provision for notice and hearing. This rule provides that the *Federal Association* (with no opportunity being accorded for notice to or hearing of the shareholders) may within fourteen days after the appointment of a conservator file an answer and serve a written demand for a hearing, whereupon the Administration will issue and serve a notice of hearing.

But if, as we believe has been demonstrated, Section 5(d) of the Act falls as violative of the limits upon legislative delegation this rule becomes one totally lacking in authority or validity. The hearing, if such there be, becomes one not of right but of mere grace or favor. Such a formality is no hearing at all. A total failure of due process results.

'The authorities are clear on this point. In *Coe v. Armour Fertilizer Works*, 273 U. S. 413, this Court held:

"Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires. In Stuart v. Palmer, 74 N. Y. 183, 188, 30 Am. Rep. 289, which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said: 'It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard.' The soundness of this doctrine has repeatedly been recognized by this court. Thus, in Security Trust & S. B. Co. v. Lexington, 203 U. S. 523, 333, 51 L. Ed. 204, 208, 27 Sup. Ct. Rep. 87, the court, by Mr. Justice Peckham, said with respect to an assessment for back taxes: 'If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but *the question is whether any notice is provided for by the statute*' (citing the New York case). So, in Central of Georgia R. Co. v. Wright, 207 U. S. 127, 138, 52 L. Ed. 134, 141, 28 Sup. Ct. Rep. 47, the court said: *'This notice must be provided as an essential part of the statutory pro-*

vision, and not awarded as a mere matter of favor or grace.' In Roller v. Holly, 176 U. S. 398, 409, 44 L. Ed. 320, 524, 20 Sup. Ct. Rep. 410, the court declared: 'The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion.'"

See, also:

Wutcher v. Pizzutti, 276 U. S. 13.

Appellants (Br. 88) assert that the "appellees," in which the individual shareholders are necessarily included, "are not adversely affected by any omission in the statute to direct a hearing," and cite *American Power & Light Co. v. Securities and Exchange Commission, supra.* We do not so understand that decision. Under express provision of the *Act* (Sec. 11(b)(2)) the managements of the corporations "admittedly were notified and participated in the hearings as required by Section 11(b)(2); and they possess no standing to assert the invalidity of that section from the viewpoint of the security holders' constitutional rights to notice and hearing." By specific provision of Section 19 of the *Act* the Commission was authorized to admit, in accordance with rules and regulations prescribed by it, "any representative of interested consumers or investors, or any other appropriate person, as a party to any proceeding before that body," and all security holders received notice of the pendency of the proceedings and invitations to file applications for intervention.

Appellants' citation (Br. 89) of *Yakus v. United States*, 321 U. S. 414, 436, 442, in support of their statement that where the right to a hearing accrues only after the appointment of the conservator appellees are not deprived of due process also requires clarification. That case

involved the Emergency Price Control Act. The decision is clearly predicated upon considerations involving "the urgency and exigencies of war-time price regulation" (p. 435). Its statement is that "when justified by compelling public interest the legislature may authorize summary action subject to later judicial review of its validity" (p. 442). Congress, in the exercise of the power to protect the national economy from the disruptive influences of inflation in time of war was permitted to do this "as the guardian of the public interest of the nation in time of war" (pp. 41-42). Thus qualified and restricted the decision does not afford appellants the support claimed from it.

It is suggested that further instances of denial of due process result from the bias and prejudice evidenced in the record on the part of the commissioner [R. 104, 105], and from the merger which was effectuated without notice or hearing of any kind [R. 377]. These matters are developed in the briefs of the appellees.

For the reasons herein given, it is respectfully submitted that the judgment appealed from should be affirmed.

FRED N. HOWSER,
Attorney General of the State of California.

EVERETT W. MATTOON,
Deputy Attorney General of the State of California,
Amici Curiae.

April 25, 1947.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 687.

JOHN H. FAHEY and A. V. AMMANN, Individually and Respectively as FEDERAL HOME LOAN BANK COMMISSIONER and CONSERVATOR for the LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,

Appellants,

vs.

PAUL MALFORNEE, C. H. NEWHOUSE, WINNIE BUCKBIN, *et al.*,

Appellees.

On Appeal from the District Court of the United States for the Southern District of California.

Comparison of Standards and Due Process Provisions Contained in Home Owners Loan Act of 1933, With Other Acts of Congress.

WYCKOFF WESTOVER,
1007 Pacific Southwest Building, Los Angeles 14,
Attorney for Appellee Shaw, Holder Members Protective Committee.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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INTRODUCTION.

For the aid of the Court in making a comparison of the pertinent provisions of the Home Owners Loan Act of 1933, as amended, with the pertinent provisions of three other acts which have recently been declared unconstitutional, as having delegated unfettered legislative authority without setting forth a definite, or any, statement of legis-

lative policy, standards, criteria or yardstick for the guidance of the legatee in enacting administrative rules and regulations, the following chart has been printed.

There is also shown a comparison of the provisions of the Home Owners Loan Act of 1933, as amended, with the provisions of the National Bituminous Coal Commission Act of 1937 (Guffey-Vinson) of the Public Utility Holding Company Act of 1938, which recently was held to be constitutional, as setting forth a statement of legislative policies, standards and provisions for due process, adequate to meet the constitutional requirements.

COMPARISON
of
CONSTITUTIONAL REQUIREMENTS
for
LEGISLATIVE STATEMENT OF POLICIES,
and
STANDARDS

DUE PROCESS PROVISIONS

I.

The Agricultural Adjustment Act of 1933 was Held to Be Unconstitutional in Part in the Case of United States v. Butler, 297 U. S. 1 (1935), Affirming the Decision of Butler v. United States, 78 F. (2d) 1 (1935) and Further Was Held to Be Unconstitutional in the Case of Chester C. Fosgate Co. v. Kirkland, 19 Fed. Supp. 152 (1937 Florida).

AGRICULTURAL ADJUSTMENT ACT: (1933)

"Section 601. Declaration of Emergency.—That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has

HOME OWNER'S LOAN ACT OF 1933

12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Section 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and.

AGRICULTURAL ADJUSTMENT ACT. (1933)

seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce, in such commodities, and render imperative the immediate enactment of title I of the Act. (May 12, 1933, c. 25, Title I, Sec. 1, 48 Stat. 31.)

"602. Declaration of policy; establishment of base periods for prices. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this act, to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agri-

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regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States."

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) ([illegible]4(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and

AGRICULTURAL ADJUSTMENT ACT. (1933)

cultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August, 1909, to July, 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the post-war period, August 1919-July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection

HOME OWNER'S LOAN ACT OF 1933

to release any such association from such control and permit its further operation.

(1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section. (May 12, 1933, c. 25, Sec. 2, 48 Stat. 32; Aug. 24, 1935, c. 641, Title I, Sec. 1(a, b), 49 Stat. 750.)

"608b. Marketing agreements.—In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, *after due notice and opportunity for hearing*, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or pro-

AGRICULTURAL ADJUSTMENT ACT, (1933)

HOME OWNER'S LOAN ACT OF 1933

duct thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the anti-trust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 (Code, Title 15, Sec. 605) of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements. (May 12, 1933, c. 25, Title I, Sec. 8b; added Aug. 24, 1935, c. 641, Title I, Sec. 4, 49 Stat. 753.)

"608c. Orders.—(1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as 'handlers.' Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

(2) Commodities to which applicable.—Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except prod-

AGRICULTURAL ADJUSTMENT ACT. (1933)

HOME OWNER'S LOAN ACT OF 1933

ucts of naval stores), or to any regional, or market classification of any such commodity or product. Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables other than asparagus, for canning), soybeans and naval stores as included in the Naval Stores Act (7:91 to 99) and stands established thereunder (including refined or partially refined oleoresin).

(3) Notice and hearing. —Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this chapter with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

AGRICULTURAL ADJUSTMENT ACT. (1933)

HOME OWNER'S LOAN ACT OF 1933

(4) Finding and issuance of order.—After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this chapter with respect to such commodity."

II.

National Industrial Recovery Act, (Title 40, Paragraphs 401 to 414 (48 Stat. 195 Chapter 90) (June 1933)). This Act Was Held Partially Unconstitutional in the Case of Panama Refining Company v. Ryan, 293 U. S. 388 (1935), and the Balance of the Act Was Held Unconstitutional in the A. L. A. Schechter Poultry Company v. United States, 295 U. S. 495.

NATIONAL INDUSTRIAL RECOVERY ACT (1933).

Section 1:

"A National emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of

HOME OWNER'S LOAN ACT OF 1933

12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Section 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor giving primary consideration to the best

NATIONAL INDUSTRIAL RECOVERY ACT (1933)

labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacities of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources." Section 3(d):

"Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public no-

HOME OWNER'S LOAN ACT OF 1933

practices of local mutual thrift and home financing institutions in the United States."

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) (1464(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

NATIONAL INDUSTRIAL RECOVERY ACT (1933)

tice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of the section."

Section 9(c):

"The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both."

HOME OWNER'S LOAN ACT OF 1933

III.

Bituminous Coal Conservation Act of 1935 (49 Stats. 991, Chapter 824). Was Held to Be Unconstitutional in the Case of Carter v. Carter Coal Company, 298 U. S. 238 (1936).

BITUMINOUS COAL CONSERVATION ACT OF 1935

49 Stats. 991, Chap. 824

DECLARATION OF NECESSITY FOR REGULATION OF BITUMINOUS COAL INDUSTRY.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby recognized and declared that the mining of bituminous coal and its distribution by the producers thereof in and throughout the United States are affected with a national public interest; that the service of bituminous coal in relation to the industrial activities, the transportation facilities, the health and comfort of the people of the United States; the conservation of bituminous coal deposits in the United States by controlled production and economical mining and marketing; the maintenance of just

HOME OWNER'S LOAN ACT OF 1933

12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Section 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States."

BITUMINOUS COAL CONSERVATION ACT OF 1935.

and rational relations between the public owners, producers, and employees: the right of the public to constant and ample supplies of coal at reasonable prices; and the general welfare of the Nation require that the bituminous coal industry be regulated as herein provided.

It is further recognized and declared that all production of bituminous coal and distribution by the producers thereof bear upon and directly affect its interstate commerce and render regulation of such production and distribution imperative for the protection of such commerce and the national public service of bituminous coal and the normal governmental revenues derivable from such industry; that the excessive facilities for the production of bituminous coal and the overexpansion of the industry have led to practices and methods of production, distribution and marketing of such coal that waste such coal resources of the Na-

HOME OWNERS LOAN ACT OF 1933.

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) (1464(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

tion, disorganize the interstate commerce in such coal and portend the destruction of the industry itself, and burden and obstruct the interstate commerce in such coal, to the end that control of such production and regulation of the prices realized by the producers thereof are necessary to promote its interstate commerce, remove burdens and obstructions therefrom, and protect the national public interest thereon; that practices prevailing in the production of bituminous coal directly affect its interstate commerce and require regulation for the protection of that commerce, and that the right of mine workers to organize and collectively bargain for wages, hours of labor, and conditions of employment should be guaranteed in order to prevent constant wage cutting and the establishment of disparate labor costs detrimental to fair competition in the interstate marketing of bituminous coal, and in order

HOME OWNERS LOAN ACT OF 1933.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

to avoid those obstructions to its interstate commerce that recur in the industrial disputes over labor relations at the mines.

NATIONAL BITUMINOUS COAL COMMISSION

"Sec. 2(a) . . .

"Such commission shall have the power to make and promulgate all reasonable rules and regulations for carrying out the provisions of this Act, and shall annually make full report of its activities to the Secretary of the Interior for transmission to Congress Upon all matters within its jurisdiction coming before it for determination, it shall have the power and duty of hearing evidence and finding facts upon which its orders and action may be predicated, and its findings of fact supported by any substantial evidence shall be conclusive upon review thereof by any court of the United States. . . ."

HOME OWNERS LOAN ACT OF 1933.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

TAX ON BITUMINOUS COAL

"Sec. 3. . . . No producer shall by reason of his acceptance of the code provided for in section 4 or of the drawback of taxes provided in section 3 of this Act be held to be contesting the constitutionality of any provision of said code or its validity as applicable to such producer.

BITUMINOUS COAL CODE

"Sec. 4. The provisions of this section shall be formulated by the Commission into a working agreement, to be known as the 'Bituminous Coal Code', and herein referred to as the 'Code'. Producers accepting and operating under its provisions are herein referred to as 'Code Members'.

For the purpose of carrying out the declared policy of this Act, the code shall contain the following conditions, provisions, and obligations which will tend to regulate interstate commerce in bituminous coal and transactions directly affecting interstate commerce in bituminous coal."

HOME OWNERS LOAN ACT OF 1933.

No such provisions. This right here being denied.

No such standards provided.

BITUMINOUS COAL CONSERVATION ACT OF 1935.	HOME OWNERS LOAN ACT OF 1933.
BITUMINOUS COAL CONSERVATION ACT OF 1935 "PART I-ORGANIZATION AND PRODUCTION "(a) . . . Marketing agencies may be established or maintained within any district by a voluntary association of producers within any producing field therein, as such producing field may be defined by the district board, and function under such general rules and regulations as may be prescribed by the district board, with the approval of the Commission, for the purpose of marketing their coal with due respect for the standards of unfair competition as defined in this Act. Each such marketing agency shall impose no unreasonable or inequitable conditions of membership and shall be truly representative of at least one-third of the tonnage of any producing field or group of producing fields. . . ."	**No such standards.**

BITUMINOUS COAL CONSERVATION ACT OF 1935.

"PART II-MARKETING"
"MINIMUM-PRICE-AREA TABLE"

". . . The minimum prices so established shall reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal, shall be just and equitable as between producers within the district, and shall have due regard to the interests of the consuming public. The procedure for establishment of minimum prices shall be in accordance with rules and regulations to be approved by the Commission."

* * *

"Each district board shall, on its own motion or when directed by the Commission, establish reasonable rules and regulations incidental to the sale and distribution of coal by code members within the district. Such rules and regulations shall not be inconsistent with the requirements of this section and shall conform to the standards of fair competition hereinafter established.

HOME OWNERS LOAN ACT OF 1933.

No such standards.

Similar edicts and fiats permitted.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

Such rules and regulations shall be submitted by the district board to the Commission with a statement of the reasons therefor, and the Commission may approve, disapprove, or modify the same, and such approval, disapproval or modification shall be binding upon all code members within the district.

"(b). District Boards shall, under rules and regulations established by the Commission, coordinate in common consuming market areas upon a fair competitive basis the minimum prices and the rules and regulations established by them, respectively, under subsection (a) hereof. Such coordination, among other factors, but without limitation shall take into account the various kinds, qualities, and sizes of coal, and transportation charges upon coal. All minimum prices established for any kind, quality, or size of coal for shipment into any consuming market area shall be just and equit-

HOME OWNERS LOAN ACT OF 1933.

No such standards.

able, and not unduly prejudicial or preferential, as between and among districts and shall reflect, as nearly as possible, the relative market values, at points of delivery in each common consuming market area, of the various kinds, qualities and sizes of coal produced in the various districts; to the end of affording the producers in the several districts substantially the same opportunity to dispose of their coals upon a competitive basis as has heretofore existed. The minimum prices established as a result of such coordination shall not, as to any district, reduce or increase the return per net ton upon all the coal produced therein below or above the minimum return as provided in subsection (a) of this section by an amount greater than necessary to accomplish such coordination, to the end that the return per net ton upon the entire tonnage of the minimum price area shall approximate and be not less than the weighted

BITUMINOUS COAL CONSERVATION ACT OF 1935.

average of the total costs per net ton of the tonnage of such minimum price area. Such coordinated prices and rules and regulations, together with the data upon which they are predicated, shall be submitted to the Commission, which may approve, disapprove, or modify the same to establish and maintain such fair competitive relationship, and such approval, disapproval, or modification shall be binding upon all code members within the affected districts. No minimum price shall be established that permits dumping. On the petition of any district board or other party in interest or on its own motion, after notice to the district boards, the Commission may at any time conduct hearings to determine whether the foregoing method of fixing minimum prices under subsection (a) is prejudicial to any district with respect to the fair opportunity of such district to market its coal. Should the Commission so

HOME OWNERS LOAN ACT OF 1933.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

find, and further find that the prejudice cannot be removed through the coordination of minimum prices as provided for in this subsection (b), then the Commission may establish a different basis for determining minimum prices in such district, to the end that fair and competitive prices shall prevail in the marketing of coal produced in such district: *Provided*, That the minimum prices so established as to any such district shall yield a return, per net ton, not less than the weighted average of the total costs, per net ton, of the tonnage of such district.

"c. When, in the public interest, the Commission deems it necessary to establish maximum prices for coal in order to protect the consumer of coal against unreasonably high prices therefor, the Commission shall have the right to fix maximum prices free on board transportation facilities for coal in any district. Such maximum prices shall

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BITUMINOUS COAL CONSERVATION ACT OF 1935.

be established at a uniform increase above the minimum prices in effect within the district at the time, so that in the aggregate the maximum prices shall yield a reasonable return above the weighted average total cost of the district. *Provided* That no maximum price shall be established for any mine which shall not return cost plus a reasonable profit.

"d. If any code member or district board, or any State or political subdivision of a State, shall be dissatisfied with such coordination of prices or rules and regulations, or by the maximum prices established for him or it pursuant to subsection (c) of this section, he or it shall have the right, by petition, to make complaint to the Commission, and the Commission shall, under rules and regulations established by it and after notice and hearing, make such order as may be required to effectuate the purpose of subsections (b) and (c) of this section,

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NO PROCEDURE PROVIDED.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

which order shall be binding upon all parties in interest. Pending final disposition of such petition, and upon reasonable showing of necessity therefor, the Commission may make such preliminary or temporary order as in its judgment may be appropriate and not inconsistent with the provisions of this Act. . . ."

"UNFAIR METHOD OF COMPETITION.

". . . (j) The Commission shall have jurisdiction to hear and determine written complaints made charging any violation of the code specified in this part II. It shall make and publish rules and regulations for the consideration and hearing of any such complaint, and all interested parties shall be required to conform thereto. The Commission shall make due effort toward adjustment of such complaints and shall endeavor to compose the differences of the parties, and shall make such order or orders in the premises

HOME OWNERS LOAN ACT OF 1933.

No Review Provided.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

ises, from time to time, as the facts and the circumstances warrant. Any such order shall be subject to review as are other orders of the commission."

PART III—LABOR RELATIONS.

"d. The Labor Board shall sit at such places as its duties require, and may appoint an examiner to report evidence for its finding in any particular case. It shall notify the parties of any dispute of the time and place of the taking of evidence, or the hearing of the cause, and its finding of facts supported by any substantial evidence shall be conclusive upon review thereof by any court of the United States. It shall transmit its findings and order to the parties interested and to the Commission. The Commission shall take no action thereon for sixty days after the entry of the order of the Labor Board; and if within such sixty days an appeal is taken under the provisions

HOME OWNERS LOAN ACT OF 1933.

No such hearings, Notice or appeal provided.

Bituminous Coal Conservation Act of 1935.	Home Owners Loan Act of 1933.
of section 16 of this Act, no action on such finding and order shall be taken by the Commission during the pendency of the appeal.	
"Organization of the Code.	
"Sec. 5(d) Any code member who shall be injured in this business or property by any other code member by reason of the doing of any act which is forbidden or the failure to do any act which is required by this Act or by the code, may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three-fold damages by him sustained, and the cost of suit, including a reasonable attorney's fee."	No Provision for Court Enforcement.
"Sec. 6(b) Any person aggrived by an order issued by the Commission or Labor Board in a proceeding to which such person is	No provision for appeals to court.

a party may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place or business, or in the United States Court of Appeal for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission or Labor Board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission or Labor Board, as the case may be, and thereupon the Commission or Labor Board as the case may be, shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, and enforce or set aside such order, in

Courts deprived of jurisdiction.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

whole or in part. No objection to the order of the Commission or Labor Board shall be considered by the court unless such objection shall have been urged below. The finding of the Commission or Labor Board as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission or Labor Board, the court may order such additional evidence to be taken before the Commission or Labor Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission or Labor Board, as the case may be,

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may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, and enforcing or setting aside, in whole or in part, any such order of the Commission or Labor Board as the case may be, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C. title 28, secs. 346 and 347)."

"(c) If any code member fails or neglects to obey any order of the Commission while the same is in effect, the Commission in its discretion may apply to the

No enforcement by Court.

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Circuit Court of Appeals of the United States within any circuit where such code member resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such code member and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as to facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce

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additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

"The Commission may modify its findings as to the facts of make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which if supported by substantial evidence shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final except that the same shall

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No Court Review.

be subject to review by the Supreme Court upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., Title 28, secs. 346 and 347).

"(d) The jurisdiction of the Circuit Court of Appeals of the United States or the United States Court of Appeals for the District of Columbia, as the case may be, to enforce, set aside, or modify orders of the Commission or Labor Board shall be exclusive.

"Such proceedings in the Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia, as the case may be, shall be given precedence over other cases pending therein, and shall be in every way expedited."

IV.

National Bituminous Coal Commission Act of 1937 Guffey-Vinson). This Is an Act Which Has Been Held Constitutional as Setting Forth Sufficient Statement of Legislative Policy, Standards and Provisions for the Protection of Due Process.

Note: This is extracts from the National Bituminous Coal Commission Act of 1937, which is a rewriting of the formerly declared unconstitutional "Bituminous Coal Conservation Act of 1935" which was held unconstitutional by this court in the case of *Carter v. Carter Coal Company*, 298 U. S. 238. The Act was rewritten to provide the constitutionally required legislative statement of policy, standards and safeguards for due process, and was held constitutional in the case of *Sunshine Coal Co. v. Adkins*, 310 U. S. 381 (1940).

NATIONAL BITUMINOUS COAL COMMISSION ACT OF 1937.

50 U. S. Stats. at Large. Part 1, page 72.

STATEMENT OF POLICY.

"That regulation of the sale and distribution in interstate commerce of bituminous coal is imperative for the protection of such commerce; that there exist practices and methods of distribution and marketing of such coal that waste the coal resources of the Nation and disorganize, burden, and obstruct interstate com-

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12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Section 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may pre-

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merce in bituminous coal, with the result that regulation of the prices thereof and of unfair methods of competition therein is necessary to promote interstate commerce in bituminous coal and to remove burdens and obstructions therefrom."

Section 2(a):

"There is hereby established in the Department of the Interior a National Bituminous Coal Commission (herein referred to as Commission), which shall be composed of seven members appointed by the President, by and with the advice and consent of the Senate, for a term of four years . . .

". . . Such Commission shall have the power to make and promulgate all reasonable rules and regulations for carrying out the provisions of this Act and shall annually make full report of its activities to the Secretary of the Interior

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scribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States."

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) (1464(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such associa-

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for transmission to Congress. A majority of the Commission shall constitute a quorum for the transaction of business, and a vacancy in the Commission shall not impair the right of the remaining members to exercise all the power of the Commission. No order which is subject to judicial review under section 6, and no rule or regulation which has the force and effect of law, shall be made or prescribed by the Commission, unless it has given reasonable public notice of a hearing, and unless it has afforded to interested parties an opportunity to be heard, and unless it has made findings of fact. Such findings, if supported by substantial evidence shall be conclusive upon review thereof by any court of the United States. . . ."

Section 6(a), page 85:

"All rules, regulations, determinations, and promulgations of any district

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tion from such control and permit its further operation.

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board shall be subject to review by the Commission upon appeal by any producer and upon just cause shown shall be amenable to the order of the Commission; and appeal to the Commission shall be a matter of right in all cases to every producer and to all parties in interest, including any State or any political subdivision thereof."

Section 6(b), page 85:

"Any person aggrieved by an order issued by the Commission in a proceeding to which such person is a party may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or

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set aside in whole or in part. . . ."

Section 6(c), page 86:

"(c) If any code member fails or neglects to obey any order of the Commission while the same is still in effect, the Commission in its discretion may apply to the Circuit Court of Appeals of the United States within any circuit where such code member resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such code member and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and

enter upon the pleadings, testimony, and proceedings set forth in such transcript *a cedree* affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

"The Commission may modify its findings as to the facts or make new findings, by reason of the additional evidence so taken, and it shall file such modi-

fied or new findings, which if supported by substantial evidence shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, Secs. 346 and 347).

"(d) The jurisdiction of the Circuit Court of Appeals of the United States or the United States Court of Appeals for the District of Columbia, as the case may be to enforce, set aside, or modify orders of the Commission shall be exclusive."

Sec. 8. (a):

"The members of the Commission are authorized to administer oaths to witnesses appearing before the

Commission and to authorize the taking of depositions in any proceedings; and, for the purpose of conducting its investigations, said Commission shall have full power to issue subpoenas and subpoenas *duces tecum*, which shall be as nearly as may be in the form of subpoenas issued by District Courts of the United States. In case of contumacy by or refusal to obey a subpoena issued to any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witness and the production of books, papers, correspondence, memoranda, and other records. Upon the filing of the application for such aid with the clerk of the court the court shall, either in term time or vacation, forthwith enter an

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order or record, requiring such person to appear before such court at a time stated in the order not more than ten days from the entry of the order (unless for good cause shown such time is extended), and show cause why he should not be required to obey such subpoena, and upon his failure to show cause it shall be the duty of the court to order such witness to appear before the said Commission and give such testimony or produce such evidence as may be lawfully required by said Commission. The District Court, either in term time or vacation, shall have full power to punish for contempt as in other cases of refusal to obey the process and order of such court. Witnesses summoned before the Commission or when depositions are taken upon order of the Commission, shall be paid the same fees as are paid for like services in courts of the United States.

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NATIONAL BITUMINOUS COAL COMMISSION ACT OF 1937.

(b) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

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V.

PUBLIC UTILITY HOLDING CO. ACT (1938)

This Act Was Recently (November 25, 1946) Held to Be Constitutional as Providing Sufficient Statement of Legislative Policy, Standards and Safe-Guards for Due Process in the Case of American Power and Light Company vs. Securities and Exchange Commission, 91 L. Ed. Advance Opinion, Page 89 and in the Companion Case of North American Company vs. Securities and Exchange Commission, 90 L. Ed. Advance Opinion 737.

PUBLIC UTILITY HOLDING CO. ACT (1938).

Sec. 11(b) 1 and 2 also 15 U. S. C., Sec. 79k.

Sec. 11(b)(1), *i. e.*, sec. 79k(b) of Title 15 U. S. C. is attacked in *North American Co. v. Securities and Exchange Commission*, 90 L. Ed. Adv. Op. 737. The Section reads as follows:

"(b) Limitations on operations of holding-company systems.—It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company

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12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Sectjon 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Sav-

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thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system; Provided, however, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems can not be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of each additional systems are located in one State, or in adjoining

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ings and Loan Associations,' and to issue charters therefor giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States."

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) (1464(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

PUBLIC UTILITY HOLDING CO. ACT (1938)

States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

Sec. 11(b)2; Sec. 79k (b)(2) of Title 15 U. S.

HOME OWNER'S LOAN ACT OF 1933

C. is attacked in *American Power and Light Co. v. Securities and Exchange Commission*, 91 L. Ed. Adv. Op. 89.

The section reads as follows:

"(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holdings, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding company system with such holding company) to take such action as the Commis

sion shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24 (Sec. 79 of this title)."

Public Utility Holding Co. Act (1938)	Home Owner's Loan Act of 1933
The subject of hearings by the Commission is set forth in Sec. 19 (79a):	
"Hearings by Commission.—Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State, State commission, State securities commission, municipality, or other political subdivision of a State, and may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers. (Aug. 26, 1935, c. 657, Title I, Sec. 19, 49 Stat. 832.)	No corresponding provisions.

PUBLIC UTILITY HOLDING CO. ACT (1938)

A court review of orders is prescribed in Sec. 24 (79x):

"Court Review of orders.—(a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resided or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any offer thereof designated by the Commission for that purpose and thereupon the Commission shall certify and file in the court a transcript of record upon which the order complained of was

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No corresponding provisions.

entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms

and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended. 28; 346, 347.)

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. (Aug. 26, 1935, c. 687, Title I, Sec. 24, 49 Stat. 834.)

Public Utility Holding Co. Act (1938)	Home Owner's Loan Act of 1933
The District Courts are expressly given jurisdiction of offenses and suits in Sec. 25(79y):	No corresponding provisions.
"Jurisdiction of offenses and suits. The District Courts of the United States, the District Court of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought	

in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C Title 28, secs. 225 and 347) (26; 225, 347), and section 7, as amended, of the Act entitled "An Act to Establish a court of appeals for the District of Columbia," approved February 9, 1893 (D. C. Code (1929), Title 18, sec. 26), (D. C. Code 1940, Sec.

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17-.01). No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court. (Aug. 26, 1935, c. 687, Title I, Sec. 25, 49 Stat. 835.)

Respectfully submitted,

WYCKOFF WESTOVER,

Attorney for Appellee Share Holder Members Protective Committee.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 687.

JOHN H. FAHEY and A. V. AMMERMAN, Individually and Respectively as, FEDERAL HOME LOAN BANK COMMISSIONER and CONSERVATOR for the Long Beach Federal Savings and Loan Association, *Appellants*,

v.

PAUL MALLONEE, C. H. NEWHOUSE, WINSTON BUCKLIN, ET AL.,

On Appeal from the District Court of the United States of the Southern District of California.

Extracts from Rules and Regulations Adopted by Appellant Fahey Under Section 5(d), H.O.L.C. Act.

CHARLES K. CHAPMAN,
Ocean Center Building,
Long Beach 2, California,
Attorney for Defendant, 3d Party Plaintiff,
Cross Claimant and Appellee,
Long Beach Federal Savings and
Loan Association.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, ET AL.

On Appeal from the District Court of the United States of the Southern District of California.

Extracts from Rules and Regulations Adopted by Appellant Fahey Under Section 5(d), H.O.L.C. Act.

NOTE.

During course of the argument of the within cause, Mr. Justice Reed inquired of counsel for appellee, Federal Savings and Loan Association, as to where the regulations referred to in Section 5(d) H.O.L.C. Act had been printed in the record or briefs. Counsel stated that with the permission of the Court he would have pertinent portions of said regulations printed and filed with the Court shortly after the close of argument. Reproduction of the entire set of regulations would involve extreme bulk. The history of

Section 204.3, now 206.1, dealing with appointment of Conservator is treated at pp. 13 to 19 of the brief for appellees Mallonee, Newhouse and Bucklin filed by their counsel, Wyckoff Westover, and will therefore not be repeated here. The following sections treat the different stages of Section 204.5, now Section 207.4 of said regulations, from 1938 to 1946. In view of counsel's regrettable experience when reading to the Honorable Court from the loose-leaf binder of regulations furnished to Federal Savings and Loan Association by appellants, (at which time he was advised by appellant's counsel that said regulation 207.4 which he had read to the Court has been amended or repealed), and in further view of Finding No. 6 of the report of the Congressional investigating committee which reads as follows:

> "(6) It developed in the hearings that the order relating to the appointment of a conservator for the Federal Savings and Loan Association of Long Beach had not been filed with the Federal Register, as required by law. The Division of the Federal Register advised your committee that only on three occasions has the Federal Home Loan Bank Administration compiled with the requirement that its orders be filed with the Federal Register. Your committee further recommends that the Administrator comply with the law in this respect in the future." (The complete report is set forth in full as Exhibit D of appellant Mallonee's affidavit filed November, 1946, in this Honorable Supreme Court.)

counsel cannot assume responsibility for the accuracy of the within copies of the regulation other than to state that they were copied from the Code of Federal Regulations of the United States of America and the various supplements thereto after perusal of the Federal Register codification index to and including March 31, 1946. It is respectfully submitted in view of the Congressional Committee's finding No. 6 above quoted that the only dependable source for the contents of the regulations adapted by appellants is such information as may be obtained from appellants themselves.

CODE OF FEDERAL REGULATIONS OF THE UNITED STATES OF AMERICA.

Title 24, Chapter II.
(In force June 1, 1938)
Section 204.5—Page 47 (365):

"Plan Recommended by Conservator or Receiver; Order of the Board; Cost of Proceedings. The conservator or receiver shall recommend to the Board a plan for the reorganization, merger, or liquidation of such Federal association. After considering the recommendations of such conservator or receiver, the Board shall enter an order providing for the release of the association and for its continued operation, or for its reorganization, merger, or liquidation. The conservator or receiver shall proceed to carry into effect any such order of the Board. If the Board enters an order providing for the liquidation of the association, the Federal Savings and Loan Insurance Corporation shall proceed to liquidate the association. The cost of all such proceedings as determined by the Board shall be assessed against the Federal association and paid from the proceeds of its assets. (Sec. 5(a), (d), of H.O.L.A. of 1933, 48 Stat. 132, 133; 12 U. S. C. 1464 (a), (d))"

CODE OF FEDERAL REGULATIONS OF THE UNITED STATES OF AMERICA.

Title 24, Chapter II, Cumulative Supplement.
(In force June 1, 1943)

Book 4, page 5513—Section 207.4 (Note: Above-numbered section 204.5 became above numbered section 207.4 by some one of the amendments between the dates June 1, 1938, and June 1, 1943. The exact date of such amendment not being apparent from the cumulative supplement.)

"Disposition. Unless the Federal Home Loan Bank Administration shall otherwise order, the Governor of the Federal Home Loan Bank System shall within twenty days of the appointment of the conservator recommend to the Federal Home Loan Bank Administration a plan for the reorganization, consolidation, mer-

ger, liquidation or other disposition of the association. If such plan shall provide for the ultimate restoration of the association to normal operations without an involuntary write-down in the association's share capital, the Federal Home Loan Bank Administration may order the conservator to carry such plan into effect. The Federal Home Loan Bank Administration may, at any time, order the association returned to its management and may, before returning the association to its management regardless of whether such association is subsequently return to its management, order a meeting of the shareholders for any purpose, including, without any limitation on the generality of the foregoing, election of new directors, or of the board of directors for any purpose, including, without any limitation on the generality of the foregoing, the filling of vacancies on the board of directors or the election of new officers, or may order meetings of both members and directors. Each such election shall be supervised by a representative of the Federal Home Loan Bank Administration. The Federal Home Loan Bank Administration may at any time, without further hearing as provided in § 206.2 of these rules and regulations, replace the conservator by appointing the Federal Savings and Loan Insurance Corporation as receiver for the purpose of liquidation."

CODE OF FEDERAL REGULATIONS OF THE UNITED STATES OF AMERICA

Title 24, Chapter 2—1945 Supplement—Book 3.
Page 24-26 (In force Nov. 1945).

As thus amended by striking out the first two sentences, Section 207.4 reads:

"The Federal Home Loan Bank Administration may, at any time, order the association returned to its management and may, before returning the association to its management regardless of whether such association is subsequently returned to its management, order a meeting of the shareholders for any purpose, including, without any limitation on the generality of the foregoing, election of new directors, or of the board of directors for any purpose, including, without any limi-

tation on the generality of the foregoing, the filling of vacancies on the board of directors or the election of new officers, or may order meetings of both members and directors. Each such election shall be supervised by a representative of the Federal Home Loan Bank Administration. The Federal Home Loan Bank Administration may at any time, without further hearing as provided in § 206.2 of these rules and regulations, replace the conservator by appointing the Federal Savings and Loan Insurance Corporation as receiver for the purpose of liquidation."

Respectfully submitted,

CHARLES K. CHAPMAN,
Ocean Center Building,
Long Beach 2, California,
Attorney for Defendant, 3d Party Plaintiff,
Cross Claimant and Appellee,
Long Beach Federal Savings and
Loan Association.

SUPREME COURT OF THE UNITED STATES

No. 687.—October Term, 1946.

John H. Fahey and A. V. Ammann, Individually and Respectively as Federal Loan Bank Commissioner and Conservator for the Long Beach Federal Savings and Loan Association, Appellants, v. Paul Mallonee, et al.	Appeal from the District Court of the United States for the Southern District of California.

[June 23, 1947.]

Mr. Justice Jackson delivered the opinion of the Court.

A specially constituted three-judge District Court has summarily, without trial, entered final judgment ousting a Conservator who, on orders of the Federal Home Loan Bank Commissioner, had taken possession of the Long Beach Federal Savings and Loan Association. It granted this and other relief on the principal ground that § 5 (d) of the Home Owners Loan Act of 1933, as amended, violates Article I. §§ 1 and 8 of the Constitution.

The Federal Home Loan Administration on May 20, 1946, without notice or hearing, appointed Ammann conservator for the Association and he at once entered into possession. The grounds assigned were that the Association was conducting its affairs in an unlawful, unauthorized and unsafe manner, that its management was unfit and unsafe, that it was pursuing a course injurious to, and jeopardizing the interests of, its members, creditors and the public. Plaintiffs at once commenced this class action in the right of the Association against the Conservator and Fahey, Chairman of the Federal Home Loan Bank Board, the Association as a nominal defendant, and several others

not important to the issue here. The complaint alleged that the Conservator and the Chairman had seized the property without due process of law, motivated by malice and ill will, and that the seizure for various reasons was in violation of the Constitution. It asked return of the Association to its former management, permanent injunction against further interference, and other relief. Other parties in interest intervened. Temporary restraining orders issued and a three-judge court was duly convened.

Personal service was secured upon Ammann, the Conservator, but Fahey, the Federal Home Loan Bank Commissioner, officially an inhabitant of the District of Columbia, could not be served in California. A motion for substituted service, therefore, was granted and process was served upon him in the District of Columbia. It was believed that this was authorized by Judicial Code, § 57, 28 U. S. C. § 118. Ammann moved to dismiss the complaint on the ground that it failed to state a cause of action. Fahey appeared specially to move dismissal or quashing return of service on him upon the ground that he could not, in his official capacity, be sued in California and had not been served properly with process. Neither had answered the complaint, nor had their time to do so expired, when final judgment was granted against them.

The three-judge court set a variety of pending motions for argument and, after argument mainly on the constitutionality of § 5 (d), with only pleadings and motion papers before it, held the section unconstitutional, ordered removal of the Conservator, permanently enjoined the authorities from holding an administrative hearing on the matter, permanently enjoined an apprehended merger, restored the institution to its former management, ordered the Conservator to account and enjoined these authorities "from ever asserting any claims, right, title or interest" in or to the Association's property. The case is here on

direct appeal. 50 Stat. 752–53, 28 U. S. C. §§ 349a, 380a.

It is manifest that whatever merit there may be in various subsidiary and collateral questions, this drastic decree can stand only if the section, as applied here, is unconstitutional.

Its defect is said to consist of delegation of legislative functions to the supervising authority without adequate standards of action or guides to policy. Section 5 (d) of the Act gives to the Board "full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation." 48 Stat. 133, 12 U. S. C. § 1464 (d). This, the District Court held, was unconstitutional delegation of the congressional function. It relied on *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, and *Schechter* v. *United States*, 295 U. S. 495.

Both cited cases dealt with delegation of a power to make federal crimes of acts that never had been such before and to devise novel rules of law in a field in which there had been no settled law or custom. The latter case also involved delegation to private groups as well as to public authorities. Chief Justice Hughes emphasized these features, saying that the Act under examination was not merely to deal with practices "which offend against existing law, and could be the subject of judicial condemnation without further legislation, or to create administrative machinery for the application of established principles of law to particular instances of violation. Rather, the purpose is clearly disclosed to authorize new and controlling prohibitions through codes of laws which

would embrace what the formulators would propose, and what the President would approve, or prescribe, as wise and beneficent measures for the government of trades and industries in order to bring about their rehabilitation, correction and development, according to the general declaration of policy in section one." *Schechter* v. *United States*, 295 U. S. 495, 535.

The savings and loan associations with which § 5 (d) deals, on the other hand, are created, insured and aided by the federal government. It may be that explicit standards in the Home Owners Loan Act would have been a desirable assurance of responsible administration. But the provisions of the statute under attack are not penal provisions as in the case of *Lanzetta* v. *New Jersey*, 306 U. S. 451, or *United States* v. *Cohen Grocery Co.*, 255 U. S. 81. The provisions are regulatory. They do not deal with unprecedented economic problems of varied industries. They deal with a single type of enterprise and with the problems of insecurity and mismanagement which are as old as banking enterprise. The remedies which are authorized are not new ones unknown to existing law to be invented by the Board in exercise of a lawless range of power. Banking is one of the longest regulated and most closely supervised of public callings. It is one in which accumulated experience of supervisors, acting for many states under various statutes, has established well-defined practices for the appointment of conservators, receivers and liquidators. Corporate management is a field, too, in which courts have experience and many precedents have crystallized into well-known and generally acceptable standards. A discretion to make regulations to guide supervisory action in such matters may be constitutionally permissible while it might not be allowable to authorize creation of new crimes in uncharted fields.

The Board adopted rules and regulations governing appointment of conservators. They provided the grounds

upon which a conservator might be named,[1] and they are the usual and conventional grounds found in most

[1] The Rules and Regulations for the Federal Savings and Loan System provide in part as follows:

PART 206. APPOINTMENT OF CONSERVATOR OR RECEIVER.

§ 206.1. *Receiver or conservator; appointment.* (a) Whenever, in the opinion of the Federal Home Loan Bank Administration, any Federal savings and loan association:

(1) Is conducting its business in an unlawful, unauthorized, or unsafe manner;

(2) Is in an unsound or unsafe condition, or has a management which is unsafe or unfit to manage a Federal savings and loan association;

(3) Cannot with safety continue in business;

(4) Is impaired in that its assets do not have an aggregate value (in the judgment of the Federal Home Loan Bank Administration) at least equal to the aggregate amount of its liabilities to its creditors, members, and all other persons;

(5) Is in imminent danger of becoming impaired;

(6) Is pursuing a course that is jeopardizing or injurious to the interests of its members, creditors, or the public;

(7) Has suspended payment of its obligations;

(8) Has refused to submit its books, papers, records, or affairs for inspection to any examiner or lawful agent appointed by the Federal Home Loan Bank Administration;

(9) Has refused by the refusal of any of its officers, directors, or employees to be examined upon oath by the Federal Home Loan Bank Administration or its representative concerning its affairs; or

(10) Has refused or failed to observe a lawful order of the Federal Home Loan Bank Administration,

the Federal Home Loan Bank Administration may appoint the Federal Savings and Loan Insurance Corporation receiver for such Federal association, which appointment shall be for the purpose of liquidation, or the Federal Home Loan Bank Administration may appoint a conservator for such Federal association to conserve the assets of the association pending further disposition of its affairs. The appointment shall be by order, which order shall state on which of the above causes the appointment is based. Any conservator so appointed shall furnish bond for himself and his employees, in form and amount and with surety acceptable to the Governor of the Fed-

state and federal banking statutes.[2] They are sufficiently explicit, against the background of custom, to be adequate for proper administration and for judicial review if there should be a proper occasion for it.

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eral Home Loan Bank System, or any Deputy or Assistant Governor, but no bond shall be required of the Federal Savings and Loan Insurance Corporation as receiver. The conservator or receiver shall forthwith upon appointment take possession of the association and, at the time such conservator or receiver shall demand possession, such conservator or receiver shall notify the officer or employee of the association, if any, who shall be in the home office of the association and appear to be in charge of such office, of the action of the Federal Home Loan Bank Administration. The Secretary of the Federal Home Loan Bank Administration shall, forthwith upon adoption thereof, mail a certified copy of the order of appointment to the address of the association as it shall appear on the records of the Federal Home Loan Bank Administration and to each director of the association, known by the Secretary to be such, at the last address of each as the same shall appear on the records of the Federal Home Loan Bank Administration. If such certified copy of the order appointing the conservator or receiver is received at the offices of the association after the taking of possession by the conservator or receiver, such conservator or receiver shall hand the same to any officer or director of the association who may make demand therefor.

§ 206.2. *Hearing on appointment.* Within fourteen days (Sundays and holidays included) after the appointment of a conservator or receiver for a Federal association not at the time of such appointment in the hands of a conservator, such Federal association, which has not, by its board of directors, consented to or requested the appointment of a conservator or receiver, may file an answer and serve a written demand for a hearing, authorized by its board of directors, which demand shall state the address to which notice of hearing shall be sent. Upon receipt of such answer and written

(Footnote 1 continued on p. 7.)

[2] Bank Conservation Act of March 9, 1933, § 203, 48 Stat. 2–3, 12 U. S. C. § 203; Banking Act of 1933, § 31, 48 Stat. 194, 12 U. S. C. § 71a; National Housing Act, § 406, 48 Stat. 1259–60, 12 U. S. C. § 1729. *E. g.*, New York Banking Law, § 606, 4 McKinney's Consolidated Laws of New York 708–709, (pocket part) 125–26; Page's Ohio General Code Ann., § 6[illegible]; 1 Deering's California General Laws, Act 986, § 13.11; Massachusetts Laws Ann. c. 167, § 22; c. 170B, § 4; Jones Illinois Stat. Ann., § [illegible]40.

It is complained that these regulations provide for hearing after the conservator takes possession instead of before. This is a drastic procedure. But the delicate nature of

demand for a hearing the Federal Home Loan Bank Administration shall issue and serve a notice of hearing upon the institution by mailing a copy of the order of hearing to the address stated in the demand therefor and shall conduct a hearing, at which time and place the Federal association may appear and show cause why the conservator or receiver should not have been appointed and why an order should be entered by the Federal Home Loan Bank Administration discharging the conservator or receiver. Such hearing shall be held either in the district of the Federal Home Loan Bank of which such Federal association is a member or in Washington, D. C., as the Federal Home Loan Bank Administration shall determine, unless the association otherwise consents in writing. Such hearing may be held before the Federal Home Loan Bank Commissioner or before a trial examiner or hearing officer, as the Federal Home Loan Bank Administration shall determine. Such Federal association, which has not, by its board of directors, consented to or requested the appointment of a conservator or receiver, may, within seven days (Sundays and holidays included) of such appointment, serve a written or telegraphic demand, authorized by its board of directors, upon the Federal Home Loan Bank Administration for a more definite statement of the cause or causes for the action. The time of service upon the Federal Home Loan Bank Administration for the purposes of this Section shall be the time of receipt by the Secretary of the Federal Home Loan Bank Administration.

§ 206.4. *Discharge of conservator or receiver.* An order of the Federal Home Loan Bank Administration discharging a conservator and returning the association to its management shall restore to such Federal association all its rights, powers and privileges and shall restore the rights, powers and privileges of its officers and directors, all as of the time specified in such order, except as such order may otherwise provide. An order of the Federal Home Loan Bank Administration discharging a receiver and returning the association to its management shall by operation of law and without any conveyance or other instrument, act or deed, restore to such Federal association all its rights, powers and privileges, revest in such Federal association the title to all its property, and restore the rights, powers and privileges of its officers and directors, all as of the time specified in such order, except as such order may otherwise provide. 24 C. F. R. Cum. Supp. § 206.1 *et seq.*, as amended, 24 C. F. R. 1943 Supp. § 206.1.

the institution and the impossibility of preserving credit, during an investigation has made it an almost invariable custom to apply supervisory authority in this summary manner. It is a heavy responsibility to be exercised with disinterestedness and restraint, but in the light of the history and customs of banking we cannot say it is unconstitutional.[3]

In this case an administrative hearing was demanded and specifications were asked as to the charges against the management of the Association. The hearing was granted and a statement of complaints against the management was furnished.

The causes for the appointment of a conservator as therein set forth by the Board included withdrawals by the president without proper voucher therefor; payment of salaries and fees not commensurate with services rendered; a director's unlawful removal of a cashier's check in the amount of $50,000 during an examination by Federal Home Loan Bank examiners; leasing properties of the Association for a twenty-year period on terms which would not provide adequate consideration to the Association; use of the Association for personal gain of one or more officers and directors; failure to maintain proper accounts and to make proper reports; and falsification of records. It also charged certain manipulations of the affairs of another institution by the president of this institution.

The plaintiffs nevertheless demanded and obtained an injunction to prevent the administrative hearing and they have therefore cut off the making of a record as to whether these charges are well-founded. Nor did the trial court take evidence on the subject. We must assume that the supervising authorities would be able to sustain the statements of fact and to justify the conclusions in their charges for the purpose of determining the case without trial. We are therefore unable to agree with the court below that

[3] See note 2.

the section is invalid and hence that regardless of the charges the management was free to go on undisciplined and unchecked.

But even if the section were defective, which we think it is not in a constitutional sense, another obstacle stands in the way of ousting this conservator.

The Long Beach Federal Savings and Loan Association was organized in 1934 under § 5 of the Home Owners Loan Act of 1933, subsection (d) of which is now sought to be declared unconstitutional. The present management obtained a charter which provided that the Association "shall at all times be subject to the Home Owners' Loan Act of 1933, providing for Federal savings and loan associations, and to any amendments thereof, and to valid rules and regulations made thereunder as the same may be amended from time to time," and that it might be "liquidated, merged, consolidated, or reorganized, as is provided in the rules and regulations for Federal savings and loan associations." In 1937, upon the Association's request, an amended charter was issued which likewise provided that the Association was to exercise its powers subject to the Home Owners' Loan Act and regulations issued thereunder.

This is a stockholder's derivative action in which plaintiffs sue only in the right of the Association. It is an elementary rule of constitutional law that one may not "retain the benefits of the Act while attacking the constitutionality of one of its important conditions." *United States* v. *San Francisco*, 310 U. S. 16, 29. As formulated by Mr. Justice Brandeis, concurring in *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 348, "The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits."

In the name and right of the Association it is now being asked that the Act under which it has its existence be

struck down in important particulars, hardly severable from those provisions which grant its right to exist. Plaintiffs challenge the constitutional validity of the only provision under which proceedings may be taken to liquidate or conserve the Association for the protection of its members and the public. If it can hold the charter that it obtained under this Act and strike down the provision for terminating its powers or conserving its assets, it may perpetually go on, notwithstanding any abuses which its management may perpetrate. It would be intolerable that the Congress should endow an Association with the right to conduct a public banking business on certain limitations and that the Court at the behest of those who took advantage from the privilege should remove the limitations intended for public protection. It would be difficult to imagine a more appropriate situation in which to apply the doctrine that one who utilizes an Act to gain advantages of corporate existence is estopped from questioning the validity of its vital conditions. We hold that plaintiffs are estopped, as the Association would be, from challenging the provisions of the Act which authorize the Board to prescribe the terms and conditions upon which a conservator may be named.

There are other important and difficult questions raised in the case which it becomes unnecessary to decide.

Objection is made to the administrative hearing upon the ground that it is before the same authority which has preferred the charges and that it cannot be expected, therefore, to be fair and impartial and that the Act does not provide for judicial review of the Board's determination on the hearing. We cannot agree that courts should assume in advance that an administrative hearing may not be fairly conducted. We do not now decide whether the determination of the Board in such proceeding is subject to any manner of judicial review. The absence from the

statute of a provision for court review has sometimes been held not to foreclose review. *Stark* v. *Wickard*, 321 U. S. 288; *Federal Reserve Board* v. *Agnew*, 329 U. S. 441; Administrative Procedure Act, 5 U. S. C. A. § 1009. Nor do we mean to be understood that if supervising authorities maliciously, wantonly and without cause destroy the credit of a financial institution, there are not remedies.

One of the allegations of the complaint is that it was intended that this institution would be merged with other institutions to the injury of its shareholders. The allegation seems to be based on the fact that a different institution with which the management of the Long Beach institution was connected was merged by the authorities in a way that was highly objectionable to some of the shareholders and aroused concern of the public authorities. We find no explicit threat to merge the Long Beach institution and there is no such finding by the court below. The Government has assured us at the bar that there is no plan for such a merger in contemplation. Nevertheless, such a merger was enjoined. In view of the absence of a finding of the threat or of evidence to sustain one, we accept the Government's assurance that merger will not follow and, hence, we do not consider it necessary to discuss the legality of hypothetical mergers.

Since the judgment that has been rendered against the Conservator, who was duly served with process, must be reversed, we find it unnecessary to decide whether Fahey was an indispensable party or was properly brought into the case by substituted service.

It is obvious that there is more to this litigation than meets the eye on the pleadings. The plaintiffs' charges that ill will and malice actuated the supervising authorities, as well as the charges of the defendants that the institution has been mismanaged and that the management is unfit, are alike undetermined by the courts below, and we

make no determination or intimation concerning the merits of these issues or as to other remedies or relief than that in the judgment before us.

Our decision is that it was error in the court below to hold the section unconstitutional, to oust the Conservator or to enjoin any of his proceedings or to enjoin the administrative hearing, and this without prejudice to any other administrative or judicial proceedings which may be warranted by law. The judgment is

Reversed.

MR. JUSTICE DOUGLAS concurs in the result.

MR. JUSTICE RUTLEDGE concurs in the result and in the Court's opinion insofar as it rests upon the ground that the controlling statute, § 5 (d) of the Home Owners' Loan Act of 1933, is not unconstitutional.